

**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

Andy Beshear
Governor

#1 Sportsman's Lane
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Mike Berry
Secretary

February 3, 2021

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
Room 29, Capitol Annex
Frankfort, Kentucky 40601

Re: 301 KAR 2:221, Waterfowl seasons and limits.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff regarding some formatting issues raised by proposed regulation amendments to 301 KAR 2:221 that were approved by our Commission, the Department of Fish and Wildlife Resources proposes the additional amendment to perfect the syntax of 301 KAR 2:221.

Thank you for your consideration, and for your service to the Commonwealth.

Sincerely,

Brian Clark
Deputy Commissioner

Attachment



Staff-suggested Amendment
Final Version 2/3/2021 8:05 a.m.
TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources

301 KAR 2:221. Waterfowl seasons and limits.

Page 1

RELATES TO paragraph

Line 5

After "KRS 150.010", insert "(45)".

Delete "(41)".

Page 1

STATUTORY AUTHORITY paragraph

Line 6

After "150.600", delete "(1)".

Page 1

NECESSITY, FUNCTION, AND CONFORMITY paragraph

Line 10

After "KRS 150.600", delete "(1)".

Page 1

Section 1(4)

Line 18

After "KRS 150.010", insert "(45)".

Delete "(41)".

Page 5

Section 8

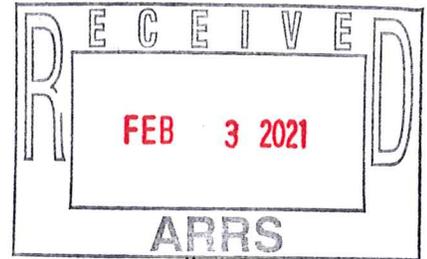
Line 5

After "Conservation Order", capitalize "season".



COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
transportation.ky.gov

Andy Beshear
GOVERNOR



Jim Gray
SECRETARY

February 3, 2021

Ms. Emily Caudill, Regulations Compiler
Legislative Research Commission
Capitol Annex, Room 029
702 Capitol Avenue
Frankfort, KY 40601

Dear Ms. Caudill:

After discussions with Administrative Regulations Review Subcommittee staff of the issues raised by **601 KAR 1:113**, the Transportation Cabinet proposes the attached suggested amendment to 601 KAR 1:113.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon H. Johnson".

Jon H. Johnson
Assistant General Counsel
Office of Legal Services
Transportation Cabinet
200 Mero Street
Frankfort, Kentucky 40622
(502) 564-7650

Subcommittee Substitute

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(As Amended at ARRS)**

601 KAR 1:113. Transportation network company.

RELATES TO: KRS 17.500, 61.878(1)(c)1., 61.931(6), 186.050, 189.290, 189A.010, 281.010, 281.600, 281.630, 281.6301, 281.631, 281.640, 281.650, 281.655, 281.656, 281.990, 304.3-070, 304.10-010-304.10-070, 304.20-020, 304.39-020(2), 304.39-040, 304.39-320, Chapter 365, 532.060
STATUTORY AUTHORITY: KRS 281.600, 281.630, 281.655

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600 authorizes the Department of Vehicle Regulation to promulgate administrative regulations to regulate and establish requirements for the safe operation of motor carriers. KRS 281.630 authorizes the department to establish requirements for a transportation network company to apply for authority to operate in Kentucky. KRS 281.655 requires the department to establish standards for pre-trip acceptance policies and prearranged ride liability policies for transportation network companies. This administrative regulation establishes the standards and application requirements for a transportation network company to operate in Kentucky.

- Section 1. Definitions. (1) "Basic reparation benefits" is defined by KRS 304.39-020(2).
(2) "Certificate" is defined by KRS 281.010(8).
(3) "Driver" is defined by KRS 281.010(20).
(4) "Mobile application" is defined by KRS 281.010(30).
(5) "Motor carrier" is defined by KRS 281.010(31).
(6) "Motor carrier vehicle" is defined by KRS 281.010(32).
(7) "Operating authority" means the authority granted to operate as a TNC in the commonwealth through the application process with the department.
(8) "Passenger" is defined by KRS 281.010(36).
(9) "Personal information" is defined by KRS 61.931(6).
(10) "Prearranged ride" is defined by KRS 281.010(40)[(39)].
(11) "Pre-trip acceptance liability policy" is defined by KRS 281.010(41)[(40)].
(12) "Regular seat" is defined by KRS 281.010(45)[(44)].
(13) "Street hail" is defined by KRS 281.010(46)[(45)].
(14) "Transportation network company" or "TNC" is defined by KRS 281.010(52)[(51)].
(15) "Transportation network company driver" or "TNC driver" is defined by KRS 281.010(54)[(53)].
(16) "Transportation network company service" or "TNC service" is defined by KRS 281.010(55)[(54)].
(17) "Transportation network company vehicle" or "TNC vehicle" is defined by KRS 281.010(56)[(55)].
(18) "Underinsured vehicle coverage" is defined by KRS 304.39-320(1).

(19) "Uninsured vehicle coverage" is defined by KRS 304.20-020(2).

Section 2. Application and Renewal. (1) A TNC shall register as a business organization with the Kentucky Secretary of State.

(2) The department may waive the filing of the certificate of assumed name if a TNC:

(a) Demonstrates compliance with the relevant provisions of KRS Chapter 365;

(b) Certifies in writing to the department that Kentucky law either prohibits or does not require the filing; and

(c) States the reasons in writing why the filing is not required.

(3) ~~[In order]~~ To apply for a certificate to operate, a TNC shall submit directly to the Division of Motor Carriers:

(a) A completed Transportation Network Company Authority Application, TC 95-627;

(b) An application fee of \$250 pursuant to KRS 281.630(3)(b); and

(c) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to **subsections (3) and (8) of** KRS 281.631 ~~[(3)(a)1. and (8)]~~.

(4) A TNC with fifty-one (51) or more vehicles may qualify vehicles to operate by providing to the department through an online data access point:

(a) A completed Transportation Network Company Authority Application, TC 95-627;

(b) An application fee of \$250 pursuant to KRS 281.630(3)(b); and

(c) A calendar year bulk qualification fee pursuant to the following schedule:

1. \$3,000 for fifty-one (51) to 100 vehicles;

2. \$4,500 for 101 to 150 vehicles;

3. \$6,000 for 151 to 200 vehicles;

4. \$7,500 for 201 to 250 vehicles;

5. \$9,000 for 251 to 300 vehicles;

6. \$10,500 for 301 to 350 vehicles;

7. \$12,000 for 351 to 400 vehicles;

8. \$15,000 for 401 to 500 vehicles; and

9. \$22,500 for 501 or more vehicles.

(5) A TNC shall annually submit the following to the Division of Motor Carriers to renew a certificate:

(a) A completed Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605;

(b) A certificate renewal fee of \$250 pursuant to KRS 281.630(4)(d); and

(c) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to **subsections (3) and (8) of** KRS 281.631 ~~[(3)(a)1. and (8)]~~.

(6) If a TNC elects to use the bulk vehicle registration payment option in the TNC's initial or renewal TNC application, the TNC shall not be required to submit additional vehicle qualification information and fees to the Division of Motor Carriers in connection with vehicles that are added during the duration of the period for which the bulk payment was made.

(7) A TNC shall pay a renewal bulk fee by December 15 of each calendar year.

(8) A TNC vehicle shall be added to the TNC's current list by submitting the following to the Division of Motor Carriers:

(a) A completed Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605; and

(b) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to **subsections (3) and (8) of** KRS 281.631 [~~(3)(a)1. and (8)~~].

(9) An application shall be submitted electronically, by mail, or by hand delivery.

(10) Operating authority obtained pursuant to this section shall not be transferable.

(11)(a) The TNC shall submit the following documents if submitting an application for certificate, annual renewal, or adding a driver during the year:

1. An affidavit from the corporate officer in charge of Kentucky operations certifying that the national criminal background check of TNC drivers established in KRS 281.630 and 281.6301 shall be completed prior to allowing the TNC driver to accept rides through the TNC mobile application; and

2. One (1) copy of the current contractual agreement between the TNC and TNC drivers.

(b) A deficient application shall be returned to the applicant with no formal action taken by the department.

Section 3. Demonstration of Financial Responsibility and Insurance.

(1) A TNC shall maintain primary automobile insurance that:

(a) Recognizes that a driver is a TNC driver or using a vehicle to transport passengers for compensation; and

(b) Provides insurance coverage for a TNC driver who is:

1. Logged on to the TNCs mobile application; or

2. Engaged in a prearranged ride.

(2) The following pre-trip acceptance liability policy insurance coverage requirements shall apply if a TNC driver is logged on to the TNC's mobile application and available to receive transportation requests but not engaged in a prearranged ride:

(a) Primary automobile liability insurance in the minimum amounts required by KRS 281.655(12);

(b) Basic reparation benefits in accordance with KRS 304.39-020;

(c) Uninsured vehicle coverage in accordance with KRS 304.20-020; and

(d) Underinsured vehicle coverage in accordance with KRS 304.39-320.

(3) The pre-trip acceptance liability policy insurance coverage requirements of KRS 281.655(12) shall be satisfied by one (1) of the following:

(a) Automobile insurance maintained by the TNC;

(b) Automobile insurance maintained by the TNC driver; or

(c) A combination of paragraphs (a) and (b) of this subsection.

(4) The following automobile insurance requirements shall apply while a TNC driver is engaged in a prearranged ride:

(a) Primary automobile liability insurance in the minimum amounts required by KRS 281.655(4);

(b) Basic reparation benefits in accordance with KRS 304.39-020;

(c) Uninsured vehicle coverage in accordance with KRS 304.20-020; and

(d) Underinsured vehicle coverage in accordance with KRS 304.39-320.

(5) The prearranged ride liability insurance coverage requirements of KRS 281.655(4) shall be satisfied by one (1) of the following:

- (a) Automobile insurance maintained by the TNC;
- (b) Automobile insurance maintained by the TNC driver; or
- (c) A combination of paragraphs (a) and (b) of this subsection.

(6) If the insurance maintained by a TNC driver has lapsed or does not provide the required coverage, the TNC shall provide the required insurance coverage beginning with the first dollar of a claim. The TNC shall have the duty to defend a claim for damages.

(7) Coverage under an automobile insurance policy maintained by the TNC shall not be dependent on a personal automobile insurer or policy first denying a claim.

(8) The insurance required by this section shall be placed with an insurer licensed pursuant to KRS 304.3-070, or with a surplus lines insurer eligible under KRS 304.10-010 through 304.10-070.

(9) A TNC driver shall carry proof of insurance coverage satisfying KRS Chapter 304, KRS 281.655, and this administrative regulation during his or her use of a vehicle in connection with a TNC's mobile application. ~~If [In the event of]~~ an accident **occurs**, and upon request, a TNC driver shall provide this insurance coverage information directly to interested parties, automobile insurers, and investigating police officers.

(10) A TNC driver shall disclose directly to interested parties, automobile insurers, the department, and investigating police officers, whether or not he or she was logged on to the TNC's mobile application or on a prearranged ride at the time of an accident.

Section 4. Insurance Exclusions. (1) A Kentucky automobile insurer may exclude the following coverage under a TNC driver's insurance policy for loss or injury that occurs while a TNC driver is logged on to a TNC's mobile application or while a TNC driver provides a prearranged ride:

- (a) Liability coverage for bodily injury and property damage;
- (b) Personal injury protection coverage as established in KRS Chapter 304;
- (c) Uninsured and underinsured motorist coverage;
- (d) Medical payments coverage;
- (e) Comprehensive physical damage coverage; and
- (f) Collision physical damage coverage.

(2) Nothing in this administrative regulation shall require a personal automobile insurer to provide coverage while a driver is:

- (a) Logged on to the TNC mobile application;
- (b) Engaged in a prearranged ride; or
- (c) Using a vehicle to transport passengers for compensation.

(3) Nothing in this administrative regulation shall preclude an insurer from providing coverage for the TNC driver's vehicle.

(4) An automobile insurer whose policy excludes coverage for a TNC vehicle or TNC driver shall have no duty to defend or indemnify a claim for personal or property damages.

(5) An automobile insurer that defends or indemnifies a claim against a TNC driver that is excluded under the terms of its policy shall have a right of contribution against other insurers that provide automobile insurance to the same driver.

(6) In a claims coverage investigation, the TNC and an insurer potentially providing coverage shall cooperate to facilitate the exchange of relevant information with directly involved parties.

(7) Information relevant to a claims coverage situation shall include:

- (a) The name of the insurer or potential insurer of the TNC driver;

(b) The precise times the TNC driver logged off and on the TNC mobile application in the twelve (12) hour period immediately before and after the incident; and

(c) A complete description of the insurance coverage including the exclusions and limits.

(8) The Transportation Cabinet shall issue an RFQ to device manufactures ~~[in-order]~~ to certify manufacturers eligible to provide ignition interlock services and commodities required for the implementation and maintenance of the state's ignition interlock program.

Section 5. Vehicles. (1) A vehicle used by a driver for TNC services shall be qualified by the department to operate by submitting a completed Transportation Network Company Authority Application, TC 95-627 and submitting the fees required in Section 2 of this administrative regulation.

(2) The TNC shall ensure that the vehicles used by TNC drivers to transport passengers shall be subject to an annual inspection by a mechanic.

(3) The annual inspection shall be completed on the vehicle inspection form provided in Transportation Network Company Authority Application, TC 95-627, or a vehicle inspection form provided by the TNC within thirty (30) days of the qualification of a vehicle for TNC services.

(4) A TNC shall collect and maintain information on the vehicles being used to provide service by TNC drivers including:

(a) The VIN and license plate number; and

(b) Records of official vehicle inspections by the automotive technician.

(5) Records of vehicle inspection and VIN and license plate numbers shall be kept by the TNC for a minimum of three (3) years from the date of inspection, and the TNC shall make the records available to the department or its representative on request. The information and records may be submitted as personal or proprietary information pursuant to KRS 61.878(1)(c)1 and 61.931(6).

(6) A vehicle used to provide TNC services shall be readily identifiable by the following:

(a) A company specific emblem or decal affixed to the front windshield on the passenger side of the vehicle provided by the TNC; and

(b) An electronic copy of the current TNC certificate.

(7) A driver who is no longer providing TNC service shall destroy or return the decal or emblem to the TNC.

(8) A TNC shall ensure that the vehicles used by drivers to provide TNC services shall:

(a) Have at least four (4) doors; and

(b) Be designed to carry no more than eight (8) persons including the driver.

Section 6. TNC Drivers. (1) A TNC shall require each driver to undergo a national criminal background check before providing TNC services pursuant to KRS 281.6301.

(2) The TNC shall certify the criminal background check during the application process established in Section 2 of this administrative regulation. The national criminal background check shall be either:

(a) A comprehensive background check using fingerprint analysis; or

(b) An individual analysis using a social security number.

(3) The analysis required in subsection (1) of this section shall be conducted by a business or firm engaged in determining criminal background history.

(4) A TNC shall also require that each TNC driver:

(a) Is at least twenty-one (21) years old;

(b) Is the owner or lessee of the TNC vehicle or has a statement from the registered owner authorizing the use of the vehicle for TNC services pursuant to KRS 281.631;

(c) Is listed as an insured of the TNC vehicle;

(d) Has a valid state-issued driver's license and vehicle registration;

(e) Has personal vehicle insurance coverage as established in Section 3 of this administrative regulation;

(f) Has completed ~~a[an annual]~~ driver safety training course approved by the department such that the certification or proof of completing the safety training course shall be valid for a period of five (5) years from the date from which the driver completed the training; and

~~(g) [Provides a written or electronic affirmation that he or she is fit and able to operate a motor vehicle to provide TNC services; and~~

~~(h)]~~ Is in compliance with applicable state law and local ordinances related to the operation of a motor vehicle.

(5) A current list of drivers shall be kept on file with the TNC and made available for inspection by the department on request. A TNC driver's electronic file shall include the following:

(a) A current driving history record to be updated annually;

(b) The current address of the driver;

(c) A copy of a valid state-issued driver's license and the operator's license number;

(d) Proof of his or her personal vehicle insurance coverage;

(e) Proof of personal vehicle registration;

(f) Proof of the written or electronic affirmation that a TNC driver is fit and able to operate a motor vehicle to provide TNC services;

(g) Verification of the criminal background check required in subsection (1) of this section;

(h) Records indicating if a driver has refused to accept a prearranged ride and the reason for doing so;

(i) Records of complaints against a driver; and

(j) A copy of the most current vehicle inspection.

Section 7. Passenger Service. (1) A TNC shall adopt a policy of non-discrimination based on the following:

(a) Destination;

(b) Race or color;

(c) National origin;

(d) Religious belief or affiliation;

(e) Sex and sexual orientation or identity;

(f) Disability;

(g) Age; and

(h) The presence of a passenger's service animal.

(2) A TNC shall notify TNC drivers of the adopted policy of non-discrimination established in subsection (1) of this section.

(3) After acceptance, a TNC driver may refuse to transport a passenger who is acting in an unlawful, disorderly, or endangering manner but shall comply with the non-discriminatory policy in subsection (1) of this section. A driver may also refuse to transport a passenger with a service animal if the driver has a documented medical allergy.

(4) A TNC driver shall not transport a passenger under the age of fourteen (14) unless accompanied by a person over the age of eighteen (18).

(5) A TNC shall establish policies regarding TNC driver behavior that shall include the following prohibitions:

(a) Being under the influence of alcohol or another substance or combination of substances that impair the driving ability while providing TNC services;

(b) Accepting a street hail by a potential rider;

(c) Directly soliciting a passenger or responding to a direct solicitation; and

(d) Providing services for cash.

(6) A driver shall immediately report the following to the driver's affiliated TNC:

(a) A refusal to transport a passenger and the reasons for the refusal within forty-eight (48) hours after the refusal if the refusal occurred after the ride had been accepted by the driver;

(b) Information regarding a driving citation, incident, or accident within twenty-four (24) hours after the event; or

(c) Information regarding a conviction within twenty-four (24) hours.

(7) A TNC shall provide the following information to the public on its Web site and mobile device application software:

(a) A schedule of its rates or the method used to calculate rates and peak pricing; and

(b) Information indicating a zero tolerance policy related to drug and alcohol usage by its drivers while performing TNC services and a passenger support telephone number or email address where a suspected violation may be immediately reported.

(8) A TNC shall provide the following information to a person requesting a ride through its mobile application:

(a) The expected cost of the trip if requested by a potential passenger;

(b) The first name and a photograph of the TNC driver accepting the ride request; and

(c) A photograph or description, including license plate number, of the vehicle that will be used for the ride.

(9) At the completion of the prearranged ride, a TNC shall electronically provide the passenger with a receipt showing:

(a) The point of origin and destination of the ride;

(b) The duration and distance of the ride;

(c) The cost of the ride broken down into base fare and additional charges; and

(d) The driver's first name.

Section 8. Terms of Service. (1) The TNC shall not require a hold harmless or indemnification clause in the terms of service for a TNC driver or passenger that may be used to evade the insurance requirements of this administrative regulation and KRS Chapter 281.

(2) A TNC shall not disclose to a third party the personally identifiable information of a user of the TNC's mobile application unless:

(a) The TNC obtains the user's consent to disclose personally identifiable information;

(b) The disclosure is required to comply with a legal obligation; or

(c) The disclosure is required to protect or defend the terms of use of the service or to investigate violations of the terms of use.

(3) A TNC may disclose a passenger's name and telephone number to the TNC driver ~~[in order]~~ to facilitate correct identification of the passenger by the driver or to facilitate communication between the passenger and the driver.

Section 9. Penalties. (1) A TNC that operates in violation of the requirements of this administrative regulation shall be fined \$200 pursuant to KRS 281.990(1).

(2) A TNC that operates in violation of the terms of its certificate or permit or operates without a valid permit shall be fined \$500 per occurrence pursuant to KRS 281.990(2).

(3) A TNC that fails to produce requested records and information pursuant to KRS 281.820 within forty-eight (48) hours of the request by the department shall be fined \$200.

(4) A TNC shall be responsible for an affiliated TNC driver's failure to comply with this administrative regulation if the driver's violation has been previously reported to the TNC in writing and the TNC has failed to take action within ten (10) days of the report.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Transportation Network Company Authority Application", TC 95-627, **October, 2020** ~~[November, 2014]~~; and

(b) "Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application", TC 95-605, **October, 2020** ~~[May, 2015]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained by accessing the department's Web site at <http://transportation.ky.gov/>.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, Phone (502) 564-7650, Fax (502) 564-5238, email jon.johnson@ky.gov



COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
transportation.ky.gov

Andy Beshear
GOVERNOR



Jim Gray
SECRETARY

February 3, 2021

Ms. Emily Caudill, Regulations Compiler
Legislative Research Commission
Capitol Annex, Room 029
702 Capitol Avenue
Frankfort, KY 40601

Dear Ms. Caudill:

After discussions with Administrative Regulations Review Subcommittee staff of the issues raised by **601 KAR 023:030**, the Transportation Cabinet proposes the attached suggested amendment to 601 KAR 023:030.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon H. Johnson".

Jon H. Johnson
Assistant General Counsel
Office of Legal Services
Transportation Cabinet
200 Mero Street
Frankfort, Kentucky 40622
(502) 564-7650

Subcommittee Substitute

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Licensing
(As Amended at ARRS)**

601 KAR 23:030. Motor vehicle speed title process exceptions.

RELATES TO: KRS ~~[186.200,]~~ 186.115, 186.200, 186A.070, 186A.120, ~~[KRS]~~ 186A.130, 186A.165, 186A.170, 186A.520

STATUTORY AUTHORITY: KRS 186A.170(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.170(1)(b) authorizes the Transportation Cabinet, Department of Vehicle Regulation, to promulgate administrative regulations providing exceptions to the speed title procedure. This administrative regulation establishes the procedures necessary to apply to obtain a certificate of title by means of an accelerated process and establishes the process for the cabinet to issue a motor vehicle certificate of title within forty-eight (48) hours of receipt of electronic speed title application from a county clerk.

Section 1. Definitions. (1) "Kentucky Certificate of Title" is defined by 103 KAR 44:120.

(2) "Rebuilt title" means a certificate of title issued pursuant to 601 KAR 9:200 for a specific motor vehicle that had been damaged and subsequently restored to an operable condition by replacing two (2) or more major component parts.

(3) "Resident" is defined by KRS 186.010(12).

(4) "Salvage title" is defined by KRS 186A.520(1).

(5) "Speed title" or "Speed certificate of title" means an expedited issuance of a certificate of title by the Transportation Cabinet as established in KRS 186A.170.

Section 2. Application for Kentucky Certificate of Title and Registration, TC 96-182.

(1) A completed Application for Kentucky Certificate of Title and Registration shall be submitted to the Division of Motor Licensing if a vehicle changes ownership or if the owner is a new Kentucky resident.

(2) A copy of the vehicle owner's Kentucky driver's license and ownership document or documents shall be attached to the Application for Kentucky Certificate of Title and Registration.

Section 3. Forty-eight (48) Hour Exceptions. (1) An Application for Kentucky Certificate of Title and Registration for a speed certificate of title shall, pursuant to this administrative regulation and KRS 186A.170(1)(b), be exempt from the forty-eight (48) hour requirement established in KRS 186A.170(1) if the Application for Kentucky Certificate of Title and Registration:

(a) Is electronically received by the cabinet from the county clerk on a Friday or Saturday;

(b) Does not include all of the required supporting materials as established in KRS 186.020;

(c) Includes one (1) or more supporting documents that is fraudulent, incomplete, or incorrect;

(d) Is for a classic motor vehicle project as established in 601 KAR 23:010; or

(e) Is not timely delivered to the cabinet due to delays from the postal delivery services.

Section 4. Motor Vehicles Ineligible for a Speed Title. (1) The following motor vehicles shall not be eligible for a speed title. A motor vehicle:

(a) Assembled from parts of junked, un-rebuildable, or other similar classification that disqualifies the vehicle from being titled for highway use pursuant to KRS 186.115;

(b) Subject to the classic motor vehicle project as established in 601 KAR 23:010;

(c) In a condition that requires the owner to obtain a rebuilt title as established in 601 KAR 9:200; or

(d) In a condition that requires the owner to obtain a salvage title as established in KRS 186A.520.

Section 5. Incorporation by Reference. (1) ~~***[The following material is incorporated by reference:***~~

~~***(a)]*** "Application for Kentucky Certificate of Title and Registration," TC 96-182, ~~***May***~~ ***[March]*** 2020 ***is incorporated by reference.***~~

(2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Vehicle Regulation, Division of Motor Licensing, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m.

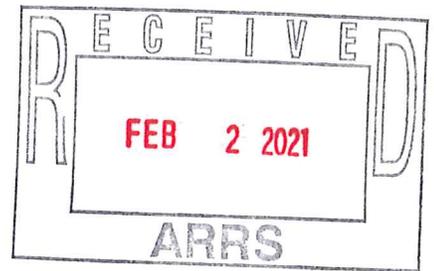
(b) This material is also available on the cabinet's Web site at <http://drive.ky.gov>.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email jon.johnson@ky.gov.



KENTUCKY LABOR CABINET
Department of Workplace Standards

Mayo-Underwood Building
500 Mero Street, 3rd Floor
Frankfort, KY 40601
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Larry L. Roberts
Secretary

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Commissioner

Andy Beshear
Governor

Jacqueline Coleman
Lieutenant Governor

February 2, 2021

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 803 KAR 2:010, Board procedures.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 2:010, on behalf of the Occupational Safety and Health Standards Board, I propose the attached amendments to 803 KAR 2:010.

Sincerely,

Robin Maples
OSH Standards Specialist
Kentucky Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

Staff-suggested Amendment

Final Version 1/29/2021 12:57 p.m.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

803 KAR 2:010. Board procedures.

Page 1

Section 1(1)

Line 21

After "is defined", insert "by".

Delete "in".

Page 2

Section 1(3)

Lines 6 through 16

After "the chairperson.", return and delete the following:

(4) "Employee" is defined in KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

Page 5

Section 6(4)

Lines 9 and 11

After "may petition", insert "z".

After "in writing", insert "z".

Page 5

Section 6(5)

Lines 13 and 15

After "submission pursuant to", insert "subsection (4) of".

After "the board and", insert "it".

Page 6

Section 7(4)

Line 5

After "successor is elected.", insert "lf".

Delete "In the event".

Page 6

Section 7(5)

Lines 10, 11, 12, 13, and 14

After "testimony or evidence", insert "if".

Delete "provided, that".

After "the chairperson directs,", insert "the".

Delete "such".

After "person", insert "files".

Delete "shall file".

After "shall set forth", insert "the".

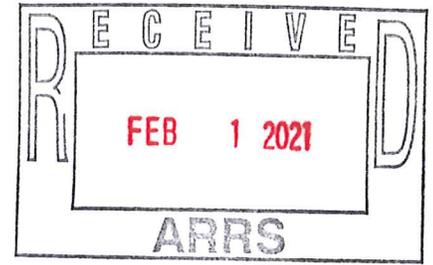
Page 6

Section 7(6)

Line 20

After "the hearing. If", insert "the".

Delete "such".



Andy Beshear
Governor

Ray A. Perry
Deputy Secretary

PUBLIC PROTECTION CABINET
Department of Insurance
P.O. Box 517
Frankfort, Kentucky 40602-0517
1-800-595-6053
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Kerry B. Harvey
Secretary

Sharon P. Clark
Commissioner

February 1, 2021

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 806 KAR 9:025. Licensing process.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 9:025, the Department of Insurance proposes the attached amendment to 806 KAR 9:025.

Sincerely,

A handwritten signature in black ink that reads "DJ Wasson".

DJ Wasson, Deputy Commissioner
Department of Insurance
500 Mero Street
Frankfort, KY 40601

Final 2-1-2021

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division

806 KAR 9:025. [Agent] Licensing process.

RELATES TO: KRS ~~165A.330~~, 304.4-010, ~~304.9-030~~, 304.9-105, 304.9-130, 304.9-150, 304.9-160, 304.9-230, ~~304.9-260/304-260~~, 304.9-270, 304.9-295, 304.9-320, 304.9-430, 304.14-642

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-080, 304.9-105, ~~304.9.133~~, 304.9-160, 304.9-170, 304.9-230, 304.9-270, ~~304.9-280~~, 304.9-295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.9-080 requires the commissioner to prescribe and furnish all forms required for licenses and appointments under Subtitle 9 of the insurance code. KRS 304.9-105 requires the commissioner to promulgate administrative regulations to mandate a prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the commissioner to promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. KRS 304.9-160 requires the commissioner to establish the examination process, and KRS 304.9-170 provides exemptions to the examination requirement. KRS 304.9-270 requires the commissioner to prescribe a form **[required]** for appointment of individual and business entity agents. KRS 304.9-295 requires the commissioner to establish forms and standards for the approval of **prelicensing[pre-licensing]** and continuing education course providers, instructors, and courses. This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

Section 1. Pre[-]Licensing Course Requirements.

(1) An individual applying for an agent license shall complete a **prelicensing[pre-licensing]** course of study approved by the commissioner for a minimum of forty (40) hours for life and health insurance, forty (40) hours for property and casualty insurance, or twenty (20) hours for each line of authority, as applicable, for the lines of authority included in the application, unless the applicant is:

- (a) Seeking a limited line of authority under KRS 304.9-230; or
- (b) Exempt pursuant to KRS 304.9-170.

(2)(a) All prelicensing courses, providers, and instructors shall be approved by the commissioner prior to offering a course.

(b) A prelicensing course provider shall submit either in writing or electronically through the department's Web site, <http://insurance.ky.gov>:

1. A Form KYP-01, Provider Approval Application, submitted once to become an approved course provider;
2. A Form CE/PL-100, Course Approval Application, for each course the approved provider wants to offer;
3. A Form CE/PL-200, Instructor Approval Application, for each course instructor;

4. The fee, as applicable, established for provider, instructor, and course approval in 806 KAR 4:010; and

5. An outline of the content of the course of study.

(c) In approving a prelicensing course of study, the commissioner or the commissioner's designee shall consider whether the course of study covers the subject matter included in the department's current study outlines or their equivalent.

(d) ~~[If approved,]~~ A prelicensing course of study approved by the commissioner shall be renewed biennially.

(e) ~~For renewals~~~~[If approved previously,]~~ the provider and instructor approval applications shall not be ~~[are not]~~ required to be submitted with each course.

(3) A prelicensing course of study shall be ~~[is]~~ valid for one (1) year from the date of completion.

(4) The prelicensing provider shall submit proof of completion of a course of study to the department and the applicant on Form CPL-01, Certificate of ~~Prelicensing~~~~[Pre-Licensing]~~ Course Completion or electronically through the department's Web site, <http://insurance.ky.gov>, for each applicant.

Section 2. Agent ~~Licensing~~~~[Examinations]~~.

(1) An applicant ~~[All applicants]~~ for an individual agent ~~[a]~~ license, **other than a preneed funeral agent license provided under 806 KAR 9:370,** shall file with the ~~department~~~~[commissioner]~~:

(a) A completed Form 8301, NAIC Individual Insurance ~~[Producer]~~ License Application;

(b) Documentation demonstrating successful completion of any required prelicensing ~~course~~~~[courses]~~;

(c) A completed background check through the Kentucky Administrative Office of the Courts; and

(d) Payment of the fees applicable to the license and lines of authority sought in accordance with ~~[according to]~~ KRS 304.4-010 and 806 KAR 4:010.

(2) If an examination is required, the documents and fees required in subsection (1) of this section shall be submitted prior to scheduling an examination.

(3) An individual applying for a line of authority identified in KRS 304.9-030(2) shall successfully ~~[successfully]~~ complete an examination ~~[examinations]~~ as follows:

(a) For a life line of authority, a life examination;

(b) For a health line of authority, a health examination;

(c) For a property line of authority, a property examination;

(d) For a casualty line of authority, a casualty examination;

(e) For a personal **lines of authority**~~[line]~~~~[lines]~~, a property and casualty personal lines examination;

(f) For a line of authority identified in accordance with KRS 304.9-030(2)(h), an examination appropriate for the kind of insurance; and

(g) For a variable life and variable annuity **products line of authority**~~[product]~~~~[products]~~, no examination is required.

(4) An examination ~~[Examinations]~~ shall only be required for **individual applicants applying for** the following limited lines of authority identified in KRS 304.9-230:

(a) For a crop limited **line** of authority, a crop examination; and

(b) For a rental vehicle limited line of authority, a rental vehicle examination shall be administered or monitored by a rental vehicle agent pursuant to 806 KAR 9:265.

(5) Every applicant for a license for which ~~[required to take]~~ an examination is required shall answer correctly seventy (70) percent of the questions to pass the examination.

(6) To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

Section 3. Adjuster Licensing [Examinations].

(1) An applicant for an adjuster license shall file with the department:

(a) A completed Form 8301, NAIC Individual Insurance [Producer] License Application;

(b) **A completed background check through the Kentucky Administrative Office of the Courts; and**

(c) The applicable fee established in 806 KAR 4:010.

(2) An individual applying for an adjuster line of authority identified in KRS 304.9-430(7) [~~or (8)~~] shall:

(a) For a property and casualty line of authority, successfully complete a property and casualty adjuster examination;

(b) For a workers' compensation line of authority, successfully complete a workers' compensation adjuster examination; and

(c) For a crop line of authority, either:

1. Successfully complete a crop adjuster examination; or

2. Demonstrate certification through the Crop Adjuster Proficiency Program, by providing to the department a copy of a Crop Adjuster Proficiency Program certification identification card with an active status issued by the federal Risk Management Agency, an agency within the U.S. Department of Agriculture, which specifies the applicant has passed a proficiency examination to adjust multi-peril crop claims.

(3) [(2)] Every applicant for a license for which [required to take] an examination is required shall answer correctly seventy (70) percent of the questions to pass the examination.

(4) To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

Section 4. Consultant Licensing[Examination].

(1) An applicant for a consultant license shall:

(a) File with the department:

1. [(a)] A completed Form 8301, NAIC Individual Insurance [Producer] License Application;

2. **A completed background check through the Kentucky Administrative Office of the Courts; and**

3. [(b)] Payment of the fees applicable to the license in accordance with KRS 304.4-010 and 806 KAR 4:010; and

(b) **Successfully complete the consultant examination.**

(2) The documents and fees required ~~under~~[in] subsection (1)(a) of this section shall be submitted prior to scheduling an examination.

(3) An applicant for a consultant license shall answer correctly seventy (70) percent of the questions to pass the consultant examination [~~and obtain a license~~].

(4) To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

Section 5. Continuing Education.

(1) (a) Continuing education providers, instructors, and courses shall be approved by the commissioner unless specifically exempted by KRS 304.9-295.

(b) [(a)] To apply for approval as a continuing education provider, an applicant [Continuing education courses providers] shall submit to the department:

1. A [a] completed Form KYP-01, Provider Approval Application; and

2. For [new] proprietary ~~schools~~[education providers], documentation of ~~licen-~~

sure[approval] by the Kentucky Commission on Proprietary Education.

(c)[(b)] To apply for approval as[ef] a continuing education instructor, an approved continuing education provider [~~Continuing education course instructors~~] shall submit to the department:

1. A [a] completed Form CE/PL-200, Instructor Approval Application; and
2. The applicable fee established in 806 KAR 4:010.

(d)[(c)] 1. To apply for approval of a continuing education course, an approved continuing education provider [~~A continuing education course~~] shall submit to the department [~~be filed by submitting the~~] Form CE/PL-100, Course Approval Application [~~form~~] at least sixty (60) days in advance of advertising the course, unless good cause is demonstrated by the provider for the failure to timely submit the form [~~file~~]. If the course is offered in multiple states, the provider may in lieu of Form CE/PL-100, submit the~~[use the National Association of Insurance Commissioners';]~~ NAIC Uniform Continuing Education Reciprocity Course Filing Form [~~for approval~~].

2. After approval of the continuing education course and the determination of the number of credit hours assigned to the course, the continuing education provider shall pay to the department the applicable fee established in 806 KAR 4:010.

(e)[(d)] The commissioner shall consider the following in determining approval of a continuing education course [~~courses~~]:

1. Whether the applicant has remitted all fees due once the total credit hours are determined pursuant to 806 KAR 4:010; and

2. Whether the continuing education course contributes directly, at a professional level, to the competence of the licensee with respect to the following subjects:

- a. Insurance, annuities, and risk management;
- b. Insurance laws and administrative regulations;
- c. Mathematics, statistics, and probability;
- d. Economics;
- e. Business law;
- f. Finance;
- g. Taxes;
- h. Agency management including all aspects of agency operations that support the long-term stability of the agency system and encourage the service and protection of customers;
- i. Ethics; and/or
- j. Other topics approved by the commissioner which contribute directly at a professional level to the competence of the licensee.

(f)[(e)] The continuing education course shall:

1. Include current, relevant, accurate, and valid reference materials, graphics, and interactivity;
2. Have clearly defined objectives and course completion criteria;
3. Have a written outline and study materials or texts; and
4. Include a means for evaluation.

(g)[(f)] A self-study course [~~Self-study courses~~] shall require successful completion of an examination.

(h)[(g)] Continuing education credit shall not be provided for:

1. Any course used to prepare for taking an examination required pursuant to KRS Chapter 304;
2. Committee service for professional organizations;
3. Computer training to develop functional skills; and
4. Motivational or self-help courses.

(i)[(h)] The commissioner shall measure continuing education course credit hours by the following:

1. Each credit hour for live instruction courses, completed in a classroom, by video, telecon-

ference, or computer, shall include at least fifty (50) minutes of continuous instruction or participation; and [-]

2. Each credit hour for recorded self-study courses, completed online or by correspondence, shall be calculated in accordance with the ~~[National Association of Insurance Commissioners']~~ Recommended Guidelines for Online Courses.

~~(j)[(f)]~~ Any material change in a previously approved continuing education course shall be filed with and approved by the commissioner prior to use.

~~(k)[(g)]~~ Biennially, a continuing education provider ~~[providers]~~ shall request renewal ~~[renew approval]~~ of a continuing education course ~~[courses]~~ and a continuing education instructor ~~[instructors]~~ by submitting the information required by subsection (1)(c)~~[(b)]~~ and ~~(d)[(e)]~~ of this section and the fee established in 806 KAR 4:010 to the department on or before ~~[all applicable information and fee payment to the commissioner prior to]~~ June 30 of even-numbered years.

~~(2) [Licensees engaging in the sale, solicitation, or negotiation of specialized products listed [as noted] in paragraphs (a), (b) and (c) of this subsection are subject to the following:]~~

~~(a)~~ A resident ~~[Resident]~~ individual agent ~~[licensees]~~ selling, soliciting, or negotiating insurance products that qualify under the Long-Term Care Partnership Insurance Program, as described in KRS 304.14-642, shall complete eight (8) hours of initial long-term care **insurance** training, and four (4) hours of additional training for each biennial continuing education compliance period.~~[-]~~

~~(b)~~ A resident individual agent ~~[Any resident licensee]~~ who holds ~~[licensed with]~~ a property and casualty line ~~[Property and Casualty lines]~~ of authority selling ~~[federal]~~ flood insurance **under the National Flood Insurance Program** shall complete three (3) hours of training in accordance with the Flood Insurance Reform Act of 2004, as set forth in Pub.L. 108-264, Section 207.~~[- and]~~

~~(c)~~ **1.** An individual agent ~~[Any individual licensee]~~ who holds a life line of authority shall successfully complete four (4) hours of initial training, prior to the sale, solicitation, or negotiation of annuities, unless the ~~agent~~ ~~[licensee]~~ has documented the completion of substantially similar training in another state, that shall include **at a minimum** information on the following topics:

~~a.~~ ~~[1-]~~ The types of annuities and various classifications of annuities;

~~b.~~ ~~[2-]~~ Identification of the parties to an annuity;

~~c.~~ **How product specific annuity contract features affect consumers**~~[3. The manner in which fixed, variable, and indexed annuity contract provisions affect consumers];~~

~~d.~~ ~~[4-]~~ The application of income taxation of qualified and non-qualified annuities;

~~e.~~ ~~[5-]~~ The primary uses of annuities; and

~~f.~~ ~~[6-]~~ Appropriate standard of conduct, sales practices, replacement, and disclosure requirements.

2. ~~The training required by subparagraph 1. of this paragraph~~~~[(e)1. of this subsection]~~ shall not include:

~~a.~~ **Marketing information;**

~~b.~~ **Training on sales techniques; or**

~~c.~~ **Specific information about a particular insurer's products.**

3. ~~Except as provided in subparagraph 4. of this paragraph~~~~[(d)1.]~~ an agent who has completed an annuity training course approved by the department prior to **January 1, 2022**~~[July 1, 2021]~~ shall, within six (6) months after **January 1, 2022**~~[July 1, 2021]~~, complete either:

~~a.~~ A new four (4) **credit** hour ~~[credit]~~ training course approved by the Department of Insurance and provided by a **Department of Insurance-approved education provider**; or

~~b.~~ An additional one-time one (1) credit **hour** training course approved by the Department of Insurance and provided by a Department of Insurance-approved education provider on appro-

appropriate sales practices ~~and~~ replacement and disclosure requirements under 806 KAR 12:120.

~~4.2.1~~ A non-resident agent who has completed a training course that is substantially similar to the training course required in subparagraph ~~3.4.1~~ of this paragraph shall meet the requirements of subparagraph ~~3.4.1~~ of this paragraph.

(3) A continuing ~~Continuing~~ education provider ~~providers~~ shall:

(a) Within thirty (30) days of completion of a continuing education course, submit electronically through the department's Web site, <http://insurance.ky.gov>, ~~to the commissioner~~ the Continuing Education Certificate of Completion forms and attendance roster for all licensees who satisfactorily completed the course;

(b) Issue ~~the~~ Form CE-301, Approved Continuing Education Certificate of Completion ~~form~~ to the licensee that successfully completed the course; and

(c) Maintain all attendance rosters and course completion certificates in hard copy or electronic format for at least five (5) years for review, as necessary, by the commissioner.

(4) A licensee shall be ~~Licensees remain~~ responsible for verifying that a continuing education provider has submitted a continuing education certificate of completion form to the department for a continuing education course that the licensee has successfully completed. If the continuing education provider has not submitted a continuing education certificate of completion form in accordance with subsection (3) of this section, the licensee shall submit ~~the~~ continuing education certificate of completion to the department within the timeframes established in KRS 304.9-260 and 304.9-295. ~~the timely submission of a continuing education certificates of completion to the commissioner even if the provider does not fulfill their responsibilities under this section.~~

(5) A licensee ~~Licensees~~ may carry forward up to twelve (12) excess credit hours to the subsequent continuing education biennium.

(6)(a) If the department does not receive proof of compliance with~~fulfillment of~~ a licensee's continuing education requirement on or before the deadline established in KRS 304.9-260 and 304.9-295, the commissioner shall:

~~1.(a)~~ Make information of the deficiency available to the licensee; and

~~2.(b)~~ Terminate the license if proof of completion of the deficient hours is not received as prescribed by KRS 304.9-295.

~~(b)(7)~~ A licensee ~~Licensees~~ whose license is terminated pursuant to paragraph (a) of this subsection ~~due to the failure to submit the certification of continuing education by the required deadline established in KRS 304.9-260 and 304.9-295~~ shall:

~~1.(a)~~ Have the license reissued within twelve (12) months of the license termination if the licensee:

~~a.1.1~~ Satisfies the delinquent continuing education requirements;

~~b.1.2~~ Submits a new application with required attachments included within Section 2(1) or Section 3(1) of this administrative regulation for a license; and

~~c.1.3~~ Submits the applicable fees established in 806 KAR 4:010; or

~~2.1(b)~~ Complete ~~Be required to complete~~ all licensing requirements specified in KRS Chapter 304, Subtitle 9 and this administrative regulation if ~~after~~ the continuing education delinquency remains unsatisfied for twelve (12) months or longer.

~~(7)(a)(8)~~ A licensee may seek exemption from continuing education ~~Continuing Education~~ requirements by completing a Form CE AFF 304, Affidavit for Exemption from Continuing Education ~~Requirement~~.

~~(b)(a)~~ An agent exempted from continuing education requirements in accordance with paragraph (a) of this subsection ~~on the basis of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions~~ may withdraw the continuing education exemption and may have all restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:

1. Completing the continuing education requirements for the immediate preceding continuing

education biennium;

2. Providing a certification of completion of those continuing education requirements; and

3. Providing a signed, written statement withdrawing the affidavit.

~~(c)[(b)]~~ The false use of Form CE AFF 304, Affidavit for Exemption from Continuing Education~~[a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions]~~ for any reason, including for the purpose of obtaining an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304.9-295 and shall subject the affiant to suspension or revocation of the agent license.

~~(8)[(9)]~~ Members of the Armed Forces who have been mobilized or deployed in support of their duties may:

—~~(a)~~ request an extension of time for completion or a waiver of continuing education requirements, in accordance with KRS 304.9-260(3), by filing with the department the Form MLW-01, Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment; ~~or~~

—~~(b) Request a waiver of continuing education requirements in accordance with KRS 304.9-260(3)].~~

Section 6. Business Entity Agent Application and Designation.

(1) A business entity applying for a license in accordance with KRS Chapter 304 Subtitle 9 or Subtitle 10, other than a preneed funeral agent license provided under 806 KAR 9:370,~~[seeking an agent license pursuant to KRS 304.9-130]~~ shall submit to the department:

(a) Form 8301-BE, NAIC~~[Uniform Application for]~~ Business Entity Insurance License Application; and

(b) The applicable fee established in 806 KAR 4:010.

(2) A business entity shall submit Form 8305, Business Entity Designation or Termination of Designation Form, to designate or terminate individuals authorized to act under the business entity's license or~~[and]~~ appointments.

Section 7. Agent Appointment.

(1) Each insurer shall appoint each agent acting on the insurer's behalf within fifteen (15) days of the agent contract's execution or the date on which the agent submits their first application to the insurer, whichever is earlier, in accordance with ~~[as established by]~~ KRS 304.9-270.

(2) An insurer seeking approval of an agent's appointment shall submit to the department:

(a) Form 8302-AP, Producer Appointment; and

(b) The ~~[the]~~ applicable filing fee established in 806 KAR 4:010.

(3) An insurer terminating an appointment pursuant to KRS 304.9-280 shall submit Form 8302-TE, Termination of Producer Appointment within thirty (30) days following the effective date of an agent's termination.

(4) The requirements of this section shall apply to both individual and business entity agent appointments.

Section 8. Record Correction. A licensee shall submit Form 8303, Record Correction Form to the department ~~[with the commissioner]~~ to make a change or update the licensee's:

(1) Name;

(2) Address;

(3) Phone number;

(4) Email address; and

(5) Name in which the licensee is doing business.~~[name and address.]~~

Section 9. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) Form CPL-01, "Certificate of ~~Prelicensing~~**[Pre-licensing]** Course Completion," (8/2019);

(b) Form 8301, "NAIC Individual Insurance ~~Producer~~**[Producer]** License Application," ~~(11/2020)~~**[(8/2019)]**;

(c) Form 8301-BE, "~~NAIC~~**[Uniform Application for]** Business Entity Insurance License Application," (8/2019);

(d) Form 8302-AP, "Producer Appointment," (8/2019);

(e) Form 8302-TE, "Termination of Producer Appointment," (8/2019);

(f) Form 8305, "Business Entity Designation or Termination of Designation Form," (8/2019);

(g) Form 8304, "Examination Retake Form," (8/2019);

(h) Form KYP-01, "Provider Approval Application," (8/2019);

(i) Form CE/PL-100, "Course Approval Application," (8/2019);

(j) Form CE/PL-200, "Instructor Approval Application," (8/2019);

(k) Form CE-301, "Approved Continuing Education Certificate of Completion," (12/2019);

(l) Form CE AFF 304, "Affidavit for Exemption from Continuing Education," (8/2019);

(m) Form 8303, "Record Correction Form," (8/2019);

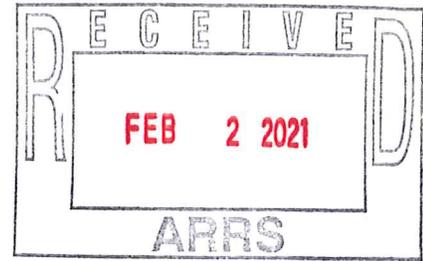
(n) Form MLW-01, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment," (8/2019);

(o) "NAIC Uniform Continuing Education Reciprocity Course Filing Form," (8/2019); and

(p) "Recommended Guidelines for Online Courses", National Association of Insurance Commissioners, 3/2015.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street~~[245 West Main Street]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.



Andy Beshear
Governor

Ray A. Perry
Deputy Secretary

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Kerry B. Harvey
Secretary

Sharon P. Clark
Commissioner

February 2nd, 2021

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: **806 KAR 09:360. Pharmacy Benefit Manager license.**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **806 KAR 09:360**, the Department of Insurance proposes the attached amendment to **806 KAR 09:360**.

Sincerely,

DJ Wasson, Deputy Commissioner
Department of Insurance
Mayo-Underwood Building, 500 Mero St.
Frankfort, KY 40601

SUGGESTED SUBSTITUTE

**PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division**

806 KAR 9:360. Pharmacy Benefit Manager License.

RELATES TO: KRS 14A.4-010, 304.1-050, 304.2-310, 304.9-020, 304.9-053, 304.9-054, 304.9-055, 304.9-133, 304.10-030, 304.10-040, 304.17A-162, 304.17A-163, 304.17A-165, 304.17A-440, 304.17A-535, 304.17A-607, 304.17A-617-304.17A-633, 45 C.F.R. 156.122

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-053(2), 304.9-054(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-053(2) requires a pharmacy benefit manager seeking a license to apply to the commissioner in writing on a form provided by the department. KRS 304.9-054(6) requires the department to promulgate administrative regulations to implement and enforce the provisions of KRS 304.9-053, 304.9-054, 304.9-055, and 304.17A-162. This administrative regulation establishes requirements for the licensure of pharmacy benefit managers.

Section 1. Definitions. (1) "Admitted insurer" is defined by KRS 304.10-030(1).

(2) "Commissioner" is defined by KRS 304.1-050(1).

(3) "Department" is defined by KRS 304.1-050(2).

(4) ~~["Maximum allowable cost" is defined by KRS 304.17A-161(3).~~

~~(5)]~~ "Nonadmitted insurer" is defined by KRS 304.10-030(8).

~~(5)]~~ [(6)] "Pharmacy benefit manager" is defined by KRS 304.9-020(15).

Section 2. Initial License and Renewal. (1) An applicant for a pharmacy benefit manager license or renewal license from the commissioner shall submit the following to the department in the format as outlined in the instructions[instruction] on the Pharmacy Benefit Manager License Application [hard copy format] [to the department]:

(a) Form PBM, The Pharmacy Benefit Manager License Application;

(b) The fee set forth in KRS 304.9-053(3) and the penalty fee, if applicable, set forth in KRS 304.9-053(5);

(c) The following evidence of financial responsibility:

1. A certificate of insurance from either an admitted insurer or a nonadmitted insurer, in accordance with KRS 304.10-040, stating that the insurer has and will keep in effect on behalf of the pharmacy benefit manager a policy of insurance covering the legal liability of the licensed pharmacy benefit manager's erroneous acts or failure to act in its[his or her] capacity as a pharmacy benefit manager, and payable to the benefit of any aggrieved party in the sum of not less than \$1,000,000; or

2. A cash surety bond issued by a corporate surety authorized to issue surety bonds in this commonwealth, in the sum of \$1,000,000, which shall be subject to lawful levy of execution by any party to whom the licensee has been found to be legally liable;

(d) The name of at least one (1) responsible individual who shall be responsible for the pharmacy benefit manager's compliance with KRS Chapter 304 and KAR Title 806 and who is:

1. Licensed as an administrator in Kentucky; and

2. Designated in accordance with KRS 304.9-133;

(e) If performing utilization review in accordance with KRS 304.17A-607, the pharmacy benefit manager's utilization review registration number;

(f) The following written policies and procedures to be used by the pharmacy benefit manager:

1. ~~[Appeals dispute resolution process required by KRS 304.17A-617 to 304.17A-633;~~
~~—2.] [Maximum allowable cost appeals process;] An appeals process for any pricing system used to determine the cost of a generic drug required by KRS 304.17A-162;~~

~~2.[3.]~~ Exceptions policy ~~[and override policy]~~ required by 45 C.F.R. 156.122(c) and KRS ~~304.17A-535(4)[304.17A-163, and KRS 304.17A-165];~~ and

~~3.[4.]~~ Pharmacy and Therapeutics committee membership standards and duties ~~[as]~~ required by 45 C.F.R. 156.122(a); ~~[and]~~

(g) Proof of a registered agent and office[registration] with the Kentucky Secretary of State in accordance with KRS 14A.4-010;

(h) Provide a listing of all clients PMB provides services to including any non-ERISA self-funded or governmental plans; and

(i) Provide a listing of any delegated or contracted companies that perform part of the PBM services.

(2)(a) Upon receipt of a complete application as required by subsection (1) of this section, the commissioner shall review the application and:

1.a. Approve the application; and

b. Issue the applicant the pharmacy benefit manager license;

2. Notify the applicant that additional information is needed in accordance with paragraph (b) of this subsection; or

3. Deny the application in accordance with paragraph (c) of this subsection.

(b)1. If supplemental or additional information is necessary to complete the application, the applicant shall submit that information within thirty (30) days from the date of the notification from the commissioner.

2. If the missing or necessary information is not received within thirty (30) days from the date of the notification, the commissioner shall deny the application unless good cause is shown. To determine if the applicant has demonstrated good cause, the commissioner shall weigh the justification provided against any other issues, including [such as] if the applicant had submitted any prior good cause excuses for the same request. Some examples of good cause include:

a. Personnel-related [Personnel-related] issues, including [such as] the individual responsible for responding was transferred, terminated, or became incapacitated due to illness;

b. A need to obtain information that was not immediately available and had to be requested from other sources;

c. A lack of sufficient resources to respond to large requests; and

d. Information technology ~~[(IT)]~~, operational, or equipment malfunctions causing unexpected delays.

(c) If the commissioner determines that the applicant does not meet the requirements for licensure, or if the application is denied pursuant to paragraph (b)2. of this subsection, the commissioner shall:

1. Provide written notice to the applicant that the application has been denied; and

2. Advise the applicant that a request for a hearing may be filed in accordance with KRS 304.2-310.

(3)(a) Except as provided in paragraph (b) of this subsection, a pharmacy benefit manager license shall:

1. Be renewed annually as required by subsection (4) of this section; or

2. Expire on March 31.

(b) If the license was issued on or before January 1, 2017, the license shall expire on March 31, 2018, if not renewed as required by subsection (4) of this section.

(4)(a) A renewal application shall include the items required by subsection (1) of this section.

(b) If the renewal application is submitted between April 1 and May 31, the application required by subsection (1) of this section shall be accompanied by a penalty fee of \$500 in accordance with KRS 304.9-053(5).

Section 3. Notice of Changes. Within thirty (30) days of any change, a licensee shall notify the commissioner of all changes among its members, directors, officers, and other individuals designated or registered to the license, **any changes to the**~~[including a]~~ listing of clients ~~[identifying any self-funded non-ERISA plans]~~ and ~~[any]~~ delegated contractors **provided in the most recent application filed by the licensee**, and any changes to its written policies and procedures submitted pursuant to Section 2(1)(f) of this administrative regulation.

Section 4. Incorporation by Reference. (1) "Pharmacy Benefit Manager License Application", Form PBM, ~~02/2021~~~~07/2020~~ [04/2017], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street [215 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

MATERIAL INCORPORATED BY REFERENCE

The agency at the time that it files this staff suggested amendment needs to file one (1) clean copy of the "Pharmacy Benefit Manager License Application, Form PBM" that includes the following changes:

- Updates the edition date to February 2021
- In Section 5, 11., address the issue that this language in (11.), "Attach a listing of all clients the PBM provides services to, including any non-ERISA self-funded or governmental plans.", appears redundant to the requirement on Page 1, Section 1 stating "Listing of entities/individuals for which a PBM provides services (within Kentucky only)".
- Change language in Section 5, 13., to state "Attach proof of a registered agent and office with the Kentucky Secretary of State in accordance with KRS 14A.4-010".
- In Section 6, 2. Insert a comma after "state" and a comma after "former employer".
- Change language in Section 6, 4., to state "I acknowledge that I understand and shall comply with the insurance laws and regulations of Kentucky."

Check appropriate box for license requested:

- Resident License
- Non-Resident License

Identify Home State: _____

Identify Home State License #: _____
(if applicable)



**COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE**

P. O. Box 517
Frankfort, Kentucky 40602-0517
email: DOI.AgentLicensingMail@ky.gov
<http://insurance.ky.gov>
Ph. 502-564-6004 Fax 502-564-6030
(PLEASE PRINT OR TYPE)

For Office Use Only

Amt. Rec'd _____

Date Rec'd _____

Tracking No. _____

Cashier: _____

PHARMACY BENEFIT MANAGER LICENSE APPLICATION

New License Application

Renewal Application

Section 1 – Demographic Information				
Entity Name		Incorporation/Formation Date (MM/DD/YY)		FEIN
If assigned, National Producer Number (NPN)		State of Domicile		UR Registration #:
List any other assumed, fictitious, alias or trade names under which you are doing business or intend to do business.				
Address of Home Office		City	State	ZIP Code
Business Address (Physical Street)		City	State	ZIP Code
Phone Number (include extension) () -	Fax Number () -	Business E-Mail Address		Business Website Address
Mailing Address	P.O. Box	City	State	ZIP Code

Listing of entities/individuals for which the PBM provides services (within Kentucky only):

Applicant Background Information

Attach a full explanation and/or the requested information for questions below as an attachment to this application. Failure to provide the required attachments or any omissions may result in the denial of this application.

Has the applicant been refused a registration, license or certification to act as (or provide the services of) a Pharmacy Benefit Manager, Pharmacy Benefit Management Plan, Pharmacy Benefits Processor, Third Party Administrator, Third Party Provider, etc., or has any registration, license or certification to act as such been denied, suspended, revoked or non-renewed for any reason by any state or federal entity? (Attach specific details separately.)	<input type="checkbox"/>	<input type="checkbox"/>
	YES	NO
Has the applicant ever been found liable in any lawsuit or arbitration proceeding involving allegations of fraud, illegal or dishonest activities in connection with the administration of pharmacy benefit management services? (Attach specific details separately.)	<input type="checkbox"/>	<input type="checkbox"/>
	YES	NO
Has the applicant had a business relationship with an insurance company terminated for any alleged fraudulent, illegal or dishonest activities in connection with the administration of pharmacy benefit management services? (Attach specific details separately.)	<input type="checkbox"/>	<input type="checkbox"/>
	YES	NO
Has the applicant, parent company or any company or organization controlling the operation of the Pharmacy Benefit Manager experienced any data security breaches or HIPAA security breaches? (If YES please attach all pertinent information concerning any data security breach. Any future data security breach must be reported immediately to the Kentucky Department of Insurance.)	<input type="checkbox"/>	<input type="checkbox"/>
	YES	NO
Does the applicant own, operate or affiliate with any pharmacy located outside of Kentucky that ships, mails or delivers in any manner, controlled substances, prescription or legend drugs or devices into Kentucky?	<input type="checkbox"/>	<input type="checkbox"/>
	YES	NO

Section 2 – Service of Process Agent for Pharmacy Benefit Manager

Name _____
Address _____ City _____ State _____ ZIP Code _____
Phone Number () _____ E-Mail Address _____

Section 3 – Licensed Administrator Acting on Behalf of the Pharmacy Benefit Manager

According to KRS 304.9-133, a business entity shall have at least one licensed individual with same line of authority and shall have at least one licensed individual designated with the commissioner at all times. List primary licensed contact person(s) responsible for regulatory compliance on behalf of the Pharmacy Benefit Manager:

Name _____ Official Title _____
Phone: _____ Email: _____ NPN or DOI ID#: _____
Name _____ Official Title _____
Phone: _____ Email: _____ NPN or DOI ID#: _____
Name _____ Official Title _____
Phone: _____ Email: _____ NPN or DOI ID#: _____

Section 4 – Individuals Responsible for the Compliance and Conduct of Affairs for Pharmacy Benefit Manager

List all individuals responsible for the compliance/conduct of affairs, including members of the board of directors, board of trustees, executive committee, other governing board or committee, the principal officers in the case of a corporation, the partners or members in the case of a partnership or association, and any other person who exercises control or influence over the affairs of the Pharmacy Benefit Manager.

1. Name _____ Official Title _____
Address _____ Professional Qualifications _____
2. Name _____ Official Title _____
Address _____ Professional Qualifications _____
3. Name _____ Official Title _____
Address _____ Professional Qualifications _____
4. Name _____ Official Title _____
Address _____ Professional Qualifications _____
5. Name _____ Official Title _____
Address _____ Professional Qualifications _____
6. Name _____ Official Title _____
Address _____ Professional Qualifications _____
7. Name _____ Official Title _____
Address _____ Professional Qualifications _____
8. Name _____ Official Title _____
Address _____ Professional Qualifications _____

(Attach additional sheets if necessary)

Section 5 - Administration and Operation: The following documentation must be submitted with this application.

The documentation required to be submitted in this section should be submitted as a Portable Document Format (PDF) bookmarked document in accordance with the items listed below and submitted to the Department via email to DOI.PharmacyBenefitManager@ky.gov.

1. Attach a detailed description of the generic drug pricing dispute appeal process to be used by contracted pharmacies, pharmacy services and administration organizations or group purchasing organization, including the appeals policy and procedure, pursuant to KRS 304.17A-162 (1) (b).
2. Attach the policy and procedure used for making price updates warranted as a result of an appeal granted under KRS 304.17A-162, including PBM's means of providing notification to all other contracted pharmacies in the network.
3. Identify the national drug pricing compendia or sources used to obtain drug price data for every drug for which the PBM establishes a maximum allowable cost to determine the product reimbursement, pursuant to KRS 304.17A-162(3).
4. Identify the location of PBM's comprehensive list of every drug subject to generic drug pricing, per KRS 304.17A-162(4).
5. Attach the policy and procedure to be used for updating generic drug pricing every seven days and the PBM's ability to provide notification to all contracted pharmacies (KRS 304.17A-162 (6) and (7)).
6. Attach the policy and procedure that ensures that every drug subject to generic drug pricing meets requirements set forth in KRS 304.17A-162(8) through KRS 304.17A-162(13).
7. Attach the policy and procedure relating to the resolution of generic drug pricing complaints which are filed with the Kentucky Department of Insurance, including timeframes and sample appeal response letter. Provide a contact person's name, address, email, and telephone number for complaints.
8. Attach the *Exceptions Policy* that allows an enrollee, designee, or prescribing provider to gain access to clinically appropriate drugs not otherwise covered by the plan, and includes a standard and expedited procedure. (45 CFR 156.122 and KRS 304.17A-535).
9. Provide the policy that explains the process that gives the ability to access prescriptions from an in-network retail, unless special handling or another reason proves that the prescription cannot be provided by a retail pharmacy. (45 CFR 156.122).
10. Attach the policy explaining any Pharmacy and Therapeutics committee membership standards and duties, including how often the committee meets, structure, and the decision-making process. (45 CFR 156.122)
11. Provide a listing of any delegated/contracted companies that perform part of the PBM services.
12. Attach proof of financial responsibility in the amount of one million dollars (\$1,000,000).
13. Attach proof of a registered agent and office with the Kentucky Secretary of State in accordance with KRS 14A.4-010
14. Attach \$1,000 non-refundable fee (KRS 304.9-200(4)), made payable to the Kentucky State Treasurer.

The filing fee must be sent via US post to the address above with a copy of the application form attached to the check.

Section 6 - Applicant's Certification and Attestation

On behalf of the Pharmacy Benefit Manager, applicant hereby certifies, under penalty of perjury, that:

1. All of the information submitted in this application and attachments is true and complete and I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license or registration revocation and may subject me and the applicant to civil or criminal penalties.
2. The applicant grants permission to the Kentucky Department of Insurance or other appropriate party in the Commonwealth of Kentucky to verify any information supplied with any federal, state, or local government agency, current or former employer, or insurance company.
3. I authorize the Kentucky Department of Insurance to give any information they may have concerning me, as permitted by law, to any federal, state or municipal agency, or any other organization and I release the Kentucky Department of Insurance, and any person acting on their behalf, from any and all liability of whatever nature by reason of furnishing such information.
4. I acknowledge that I understand and shall comply with the insurance laws and regulations of Kentucky.
5. I hereby certify that I will furnish any additional information upon request.

Must be signed by an officer, director, or partner of the entity, or member or manager of a limited liability company who has authority to act on behalf of the entity:

Signature

Date

Typed or Printed Name

Title

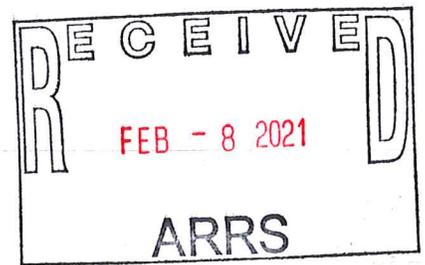
Address line 1

Address line 2

City

State

ZIP



PUBLIC PROTECTION CABINET

Andy Beshear
Governor

Department of Insurance
P.O. Box 517
Frankfort, Kentucky 40602-0517
1-800-595-6053
<http://insurance.ky.gov>

Kerry B. Harvey
Secretary

Ray A. Perry
Deputy Secretary

Sharon P. Clark
Commissioner

February 8th, 2021

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: **806 KAR 12:120. Suitability in annuity transactions,**

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by **806 KAR 12:120**, the Department of Insurance proposes the attached corrected amendment to **806 KAR 12:120**.

Sincerely,

DJ Wasson, Deputy Commissioner
Department of Insurance
Mayo-Underwood Building, 500 Mero St.
Frankfort, KY 40601

Subcommittee Substitute

PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division
(As Amended at ARRS)

806 KAR 12:120. Suitability in annuity transactions.

RELATES TO: KRS ~~304.1-040, 304.5-030, 304.9-020(1), 304.9-025, 304.9-040, 304.9-390, 304.12-010, 304.12-030(1)(a), 304.99-020, 26 U.S.C. 401, 403, 408, 414, 457, 29 U.S.C. 1001-1461~~

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation requires licensees to **satisfy specific requirements and standards ~~act in the best interest of the consumer~~** when making a recommendation of an annuity and to require insurers to establish ~~establish~~ and maintain a system to supervise recommendations ~~[standards and procedures for recommendations to consumers that result in a transaction involving annuity products]~~ so that the insurance needs and financial objectives of consumers **at the time of ~~during~~** the transaction are effectively ~~[appropriately]~~ addressed.

Section 1. Definitions. (1) "Agent" is defined **by ~~in~~** KRS 304.9-020(1).

(2) "Annuity" is defined **by ~~in~~** KRS 304.5-030.

(3) "Cash Compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.

(4) ~~[(3)]~~ "Commissioner" is defined by KRS 304.1-050(1).

(5) "Comparable standards" means:

~~(a) [1-1]~~ With respect to broker-dealer and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including Regulation Best Interest and any amendments or successor regulations thereto;

~~(b) [2-1]~~ With respect to investment advisers registered under federal and state securities laws or investment adviser representatives, the fiduciary duties, and all other requirements imposed on ~~such~~ investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940, including the Form ADV and interpretations; and

~~(c) [3-1]~~ With respect to plan fiduciaries or fiduciaries, means the duties, obligations, prohibitions, and all other requirements attendant to such status under the Employee Retirement Security Act of 1974 (ERISA) or the Internal Revenue Code (IRC) and any amendments or successor statutes thereto.

(6) ~~[(4)]~~ "Consultant" is defined **by ~~in~~** KRS 304.9-040.

(7) ~~[(5)]~~ "Financial professional" means a licensee that is regulated and acting as:

(a) [1-] A broker-dealer registered under federal and state securities laws or a registered representative of a broker-dealer;

(b) [2-] An investment adviser registered under federal and state securities laws or an investment adviser representative associated with the federal and state registered investment adviser; or

(c) [3-] A plan fiduciary under Section 3(21) of the ERISA or fiduciary under Section 4975 (e)(3) of the IRC or any amendments or successor statutes thereto.

(8) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(9)[(6)] "Insurance producer" is defined **by [in]** KRS 304.9-020(10).

(10)[(7)] "Insurer" is defined **by [in]** KRS 304.1-040.

(11) "Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by producers.

(12)[(8)] "Licensee" means agent, or an insurer if an agent is not involved, and consultant.

(13) "Material conflict of interest" means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation but does not include cash compensation or non-cash compensation.

(14) "Non-cash compensation" means any form of compensation that is not cash compensation.

(15) "Nonguaranteed elements" means the premium, credited interest rates including bonus, benefits, values, dividends, non-interest based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. **An element shall be considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.**

(16)(a) [(9)] "Recommendation" means advice provided by a licensee to an individual consumer that results in a purchase, exchange, or replacement of an annuity in accordance with that advice.

(b) Recommendation shall not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

(17) [(10)] "Replacement" is defined **by [in]** KRS 304.12-030(1)(a).

(18) "SEC" means the United States Securities and Exchange Commission. [

(11) "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation in accordance Section 3(2).]

Section 2. Exemptions. This administrative regulation shall not apply to recommendations involving:

(1) Direct response solicitations without a recommendation based on information collected from the consumer pursuant to this administrative regulation; or

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan covered by the Employee Retirement and Income Security Act (ERISA), codified as 29 U.S.C. 1001 to 1461;

(b) A plan described by 26 U.S.C. 401(a), **401(k)**, 403(b), 408(k), or **408(p)**, as amended, if established or maintained by an employer;

(c) A **governmental**~~[government]~~ or church plan defined in 26 U.S.C. 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 U.S.C. 457;

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Prepaid funeral contracts.

Section 3. Duties of Insurers and Licensees. (1) **Obligations** ~~[Best interest obligations]~~. A licensee, when making a recommendation of an annuity, shall **do so** ~~[act in the best interest of the consumer]~~ under the circumstances known at the time the recommendation is made, without placing the licensee's or the insurer's financial interest ahead of the consumer's interest **and does so by satisfying** ~~[A licensee shall have acted in the best interest of the consumer if he has satisfied]~~ the following obligations regarding care, disclosure, conflict of interest and documentation.

(a) 1. Care obligation. The licensee, in making a recommendation, shall exercise reasonable diligence, care, and skill to:

a. Know the consumer's financial situation, insurance needs, and financial objectives;

b. Understand the available recommendation options after making a reasonable inquiry into options available to the licensee;

c. Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and

d. Communicate the basis or bases of the recommendation.

2.a. The requirements under subparagraph 1. of this paragraph shall include **at a minimum, the following information to determine whether a recommendation addresses the consumer's financial situation, insurance needs, and financial objectives** making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

b. Consumer profile information shall include:

(i) Age;

(ii) Annual Income;

(iii) Financial situation and needs, including debts and other obligations;

(iv) Financial experience;

(v) Insurance needs;

(vi) Financial objectives;

(vii) Intended use of the annuity;

(viii) Financial time horizon;

(ix) Existing assets or financial products, including investment, annuity, and insurance holdings;

(x) Liquidity needs;

(xi) Liquid net worth;

(xii) Risk tolerance, including willingness to accept nonguaranteed elements in the annuity;

(xiii) Financial resources used to fund the annuity; and

(xiv) Tax status.

3.a. The requirements under subparagraph 1. of this paragraph shall require a licensee to consider the types of products the licensee is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives.

b. The requirements under subparagraph 1. of this paragraph shall not require analysis or consideration of any products outside the authority and **license [licensee]** of the licensee or other possible alternative products or strategies available in the market at the time of the recommendations.

4. The requirements under paragraph (a) of this subsection shall not create a fiduciary obligation or relationship and **shall** only create a regulatory obligation as established in this administration regulation.

5 a. Factors relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives shall include:

(i) Consumer profile information;

(ii) Characteristics of the insurer; and

(iii) Product costs, rates, benefits, and features.

b. The level of importance of each factor under the care obligation of **this [the]** paragraph may vary depending on the facts and circumstances of a particular case;

c. **Factors [Each factor]** shall not be considered in isolation.

6. The requirements under paragraph (a) of this subsection shall include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death ~~;~~ or living benefit, or other insurance-related features.

7. The requirements under **paragraph [subparagraph]** (a) of this subsection shall apply to the particular annuity as a whole and the underlying subaccount to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar **product [producer]** enhancements, if any.

8. The requirements under paragraph (a) of this subsection shall not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

9. The requirements under paragraph (a) of this subsection shall not mean the licensee has ongoing monitoring obligations. An obligation may be separately owed under the terms of a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the licensee.

10. In the case of an exchange or replacement of an annuity, the licensee shall consider the whole transaction, which shall include taking into consideration whether:

a. The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living, or other contractual benefits, or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

b. The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

c. The consumer had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding sixty (60) months.

11. If the licensee does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses, this administrative regulation shall not be construed to require a licensee to obtain any license other than a license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including any securities license, in order to fulfill the duties and obligations contained in this administrative regulation.

(b) Disclosure obligation.

1. Prior to the recommendation or sale of an annuity, the licensee shall prominently disclose to the consumer on a form substantially similar to "Insurance Agent (Producer) Disclosure For Annuities":

a. A description of the scope and terms of the relationship with the consumer and the role of the licensee in the transaction;

b. An affirmative statement on whether the licensee is licensed and authorized to sell the following products:

(i) Fixed annuities;

(ii) Fixed indexed annuities;

(iii) Variable annuities;

(iv) Life insurance;

(v) Mutual funds;

(vi) Stocks and bonds; and

(vii) Certificates of deposit;

c. An affirmative statement describing the insurers **for which** the licensee is authorized, contracted or appointed, or otherwise able to sell insurance products ~~for~~ using the following descriptions:

(i) **From one (1) [One]** insurer;

(ii) From two **(2)** or more insurers; or

(iii) From two **(2)** or more insurers although primarily contracted with one **(1)** insurer.

d. A description of the sources and types of cash compensation and non-cash compensation to be received by the licensee, including whether the licensee is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary, or other licensee, or by fee as a result of a contract for advice or consulting services; and

e. A notice of the consumer's right to request additional information regarding cash compensation described in subparagraph 2. of this paragraph;

2. Upon request of the consumer or the consumer's designated representative, the licensee shall disclose:

a. A reasonable estimate of the amount of cash compensation to be received by the licensee, which may be stated as a range of amounts or percentages; and

b. Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages.

3. Prior to or at the time of the recommendation or sale of an annuity, the licensee shall have a reasonable basis to believe: ~~[In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance~~

~~transactions, the licensee shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to these investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there shall be a reasonable basis to believe all of the following:]~~

~~a. [(a)] The consumer has been informed of various features of the annuity, including:~~

~~(i) [1.] The potential surrender period and surrender charge;~~

~~(ii) [2.] Potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity;~~

~~(iii) [3.] Mortality and expense fees;~~

~~(iv) [4.] Investment advisory fees;~~

~~(v) [5.] Potential charges for and features of riders or other options of the annuity;~~

~~(vi) [6.] Limitations on interest returns, potential changes in nonguaranteed elements of the annuity, insurance, and investment components; [and]~~

~~(vii) [7.] Market risk; **and**~~

~~**(viii) Annual fees.];**~~

~~(b) The consumer would benefit from certain features of the annuity, including:~~

~~1. Tax deferred growth;~~

~~2. Annuitization; or~~

~~3. Death or living benefit;~~

~~(c) For the particular consumer, based on his or her suitability information, the transaction as a whole is suitable, including:~~

~~1. The type of annuity;~~

~~2. The underlying subaccounts to which the funds are allocated at purchase or exchange of the annuity;~~

~~3. The riders; and~~

~~4. The similar product enhancements; and~~

~~(d) If there is an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:~~

~~1. The consumer shall:~~

~~a. Incur a surrender charge;~~

~~b. Be subject to the commencement of a new surrender period;~~

~~c. Lose existing benefits including death, living, or other contractual benefits; or~~

~~d. Be subject to increased fees, including:~~

~~(i) Investment advisory fees; or~~

~~(ii) Charges for riders and similar product enhancements;~~

~~2. The consumer would benefit from product enhancements and improvements; and~~

~~3. The consumer has had another annuity exchange or replacement and in particular, exchange or replacement within the preceding thirty-six (36) months.]~~

(c) Conflict of interest obligation. A licensee shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

(d) Documentation obligation. A licensee shall at the time of recommendation or sale:

1. Make a written record of any recommendation and the basis for the recommendation subject to this regulation;

2. Obtain a consumer signed statement on a form substantially similar to "Consumer Refusal To Provide Information" documenting:

a. A consumer's refusal to provide the consumer profile information, if any; and

b. A consumer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and

3. Obtain a consumer signed statement on a form substantially similar to "Consumer Decision To Purchase An Annuity NOT Based ~~[A]~~ On **A** Recommendation" acknowledging the annuity transaction is not recommended if a **consumer [customer]** decides to enter into an annuity transaction that is not based on the licensee's recommendation.[

~~(2) Prior to the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, the licensee shall make reasonable efforts to obtain the consumer's suitability information including the following:~~

~~(a) Age;~~

~~(b) Annual income;~~

~~(c) Financial situation and needs, including the financial resources used for the funding of the annuity;~~

~~(d) Financial experience;~~

~~(e) Financial objectives;~~

~~(f) Intended use of the annuity;~~

~~(g) Financial time horizon;~~

~~(h) Existing assets, including investment and life insurance holdings;~~

~~(i) Liquidity needs;~~

~~(j) Liquid net worth;~~

~~(k) Risk tolerance; and~~

~~(l) Tax status.~~

~~(3) Except as permitted under subsection (4), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.]~~

(e) 1. Application of the **[best interest]** obligation. A requirement applicable to a licensee under this subsection shall apply to every licensee who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the licensee has had any direct contact with the consumer.

2. Activities providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a licensee shall not constitute material control or influence.

(2) Transactions not based on a recommendation.

(a)[(4)(a)] Except as provided under paragraph (b) of this subsection, the licensee shall not have an obligation to a consumer under this subsection or subsection (1)(a) of this section related to an annuity transaction if:

1. A consumer refuses to provide relevant [suitability] consumer profile information requested by the licensee and the annuity transaction is not recommended;

2. A consumer decides to enter into an **annuity [insurance]** transaction not based on a recommendation of the licensee;

3. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer; or

4. No recommendation is made.

(b) An insurer's issuance of an annuity [A licensee's recommendation] subject to paragraph

(a) of this subsection shall be reasonable under all the circumstances actually known to the insurer [licensee] at the time the annuity is issued.

(3)(a) Except as permitted under subsection (2) of this section, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information.

~~(5) A licensee shall at the time of sale:~~

~~(a) Make a record of any recommendation subject to section 3(1) of this administrative regulation;~~

~~(b) Obtain a consumer signed statement documenting a consumer's refusal to provide suitability information, if any; and~~

~~(c) Obtain a consumer signed statement acknowledging that an annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the licensee's recommendation.]~~

(b) [(6)(a)] An insurer shall establish and maintain a system that is reasonably designed to achieve a licensee's compliance with this administrative regulation, including the following:

1. The insurer shall establish and maintain reasonable procedures to inform its licensees of the requirements of this administrative regulation and shall incorporate the requirements of this administrative regulation into relevant [insurance] licensee training manuals.

2. The insurer shall establish and maintain standards for licensee product training and shall establish and maintain reasonable procedures to require its licensees to comply with the requirements of Section 4 of this administrative regulation.

3. The insurer shall provide product-specific training and training materials ***that [which]*** explain all material features of its annuity products to its licensees.

4. The insurer shall establish and maintain procedures for the review of each recommendation, prior to issuance of an annuity, that are designed to ensure [that] there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives. ~~[a recommendation is suitable.]~~

a. ***The [These]*** review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including physical review.

b. ***The [This]*** electronic or other system for review procedures may be designed to require additional review only of those transactions identified for additional review by the selection criteria.

5. The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with subsections (1), (2), (4), and (5) of this section. ~~[suitable.]~~ This may include confirmation of the consumer's consumer profile ~~[consumer suitability]~~ information, systematic customer surveys, licensee and consumer interviews, confirmation letters, licensee

statements or attestations, and programs of internal monitoring. An insurer may comply with this subparagraph by applying sampling procedures, or by confirming the consumer profile [suitability] information or other required information under this section after issuance or delivery of the annuity.

6. The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, if a licensee has provided to the consumer the information required to be provided under this section.

7. The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.

8. The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subparagraph shall not prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time.

9. [6.] The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(c)[(b)]1. An insurer may contract for performance of a function, including maintenance of procedures, required under subsection (3) [paragraph (2)] [(a)] of this subsection.

2. An insurer's supervision system under this subsection [paragraph 1.] shall include supervision of contractual performance under this subsection. This shall include the following:

a. Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

b. Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager represents, that the function is properly performed; and

3. If an insurer contracts for performance of a function and supervises the performance of the contract in accordance with subparagraph (c)2. [subsection (c)1] [(6)(b)2.] of this section, the insurer shall remain responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section 5 of this administrative regulation.

(d)1. [(e)] An insurer shall not be required to include in its system of supervision a licensee's recommendations to consumers of products other than the annuities offered by the insurer; or[-]

2. Include consideration of or comparison to options available to the licensee or compensation relating to those options other than annuities or other products offered by the insurer.

(4)[(7)] Prohibited practices. A licensee or an insurer shall not attempt to influence a consumer from:

(a) Truthfully responding to an insurer's request for confirmation of the consumer profile [suitability] information;

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

(5)(a)1. Safe Harbor. Recommendations and sales of annuities [(8)(a)1. Sales] made in compliance with comparable standards [FINRA requirements pertaining to suitability and

~~supervision of annuity transactions]~~ shall satisfy the requirements under this administrative regulation.

2. This subsection shall apply to ~~[FINRA broker-dealer]~~ all recommendations and sales of [variable annuities and fixed] annuities made by financial professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard even if **the [such]** standard would not otherwise apply to the product or recommendation at issue [if the suitability and supervision is similar to those applied to variable annuity sales.]

3. This subsection shall not limit the commissioner's ability to investigate and enforce the provisions of this administrative regulation.

(b) Nothing in paragraph (a) of this subsection shall limit the insurer's obligation to comply with subsection (3)(a) of this section, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(c) [(b)] For paragraph (a) **of this subsection** to apply, an insurer shall:

1. Monitor the ~~[FINRA member broker-dealer]~~ relevant conduct of the financial professional seeking to rely on paragraph (a) **of this subsection** or the entity responsible for supervising the licensee, such as the licensee's broker-dealer or investment adviser registered under federal securities laws using information collected in the normal course of an insurer's business; and

2. Provide to the ~~[FINRA member broker-dealer]~~ entity responsible for supervising the licensee seeking to rely on paragraph (a) **of this subsection**, such as the financial professionals broker-dealer or investment adviser registered under federal securities laws, information and reports that are reasonably appropriate to assist [the FINRA member broker-dealer] **the [such]** entity to maintain its supervision system.

(6) [(9)] The requirements of this section are intended to supplement and not replace the disclosure requirements in 806 KAR 12:150.

Section 4. Licensee Training. (1) An agent shall not sell, solicit, or negotiate an annuity product unless the agent has **adequate knowledge of the product to recommend the annuity and** completed training in accordance with **806 KAR 9:025 [806 KAR 9:220, Section 5].**

(2) A consultant shall not advise an individual regarding an annuity unless the consultant has **adequate knowledge of the product to recommend the annuity and** completed the training in accordance with **806 KAR 9:025 [806 KAR 9:220, Section 5].**

(3) A licensee shall maintain records documenting compliance with the training requirements in subsection (1) and (2) of this section, which shall be available:

(a) To the department, if requested; and

(b) For a period not less than five (5) years.

(4) An insurer shall verify that an agent has completed the annuity training course required under this subsection before allowing the agent to sell an annuity product for that insurer.

Section 5. Mitigation of Responsibility. (1) An insurer shall be responsible for compliance with this administrative regulation. If a violation occurs, due to the action or inaction of the insurer or its licensee, the commissioner may require:

(a) An insurer to take appropriate corrective action for any consumer harmed by a failure to comply with this regulation by the insurer[insurer's], an entity contracted to perform the insurer's

supervisory duties, or by its **licensees** ~~licensee's~~ [agent's, violation of this administrative regulation] ~~]~~

(b) A licensee [an agent] to take appropriate corrective action for any consumer harmed by the licensee's [insurance agent's] violation of this administrative regulation; or

(c) A supervising licensee [insurance producer] that employs or contracts with another licensee [an insurance agent] to sell, or solicit the sale, of annuities to consumers, to take appropriate corrective action for any consumer harmed by the licensee's [agent's] violation of this administrative regulation;

(2) The commissioner may require a consultant to take appropriate corrective action for any consumer harmed by the consultant's violation of this administrative regulation.

(3) Any applicable penalty under KRS 304.99-020 for a violation of ~~[Section 3(1), (2), or (3) of]~~ this administrative regulation may be reduced or eliminated, if corrective action for the consumer is taken promptly after a violation is discovered.

Section 6. Recordkeeping. Licensees shall maintain records of the information collected from the consumer, disclosure made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions in accordance with KRS 304.9-390 and 806 KAR 2:070. An insurer may maintain documentation on behalf of a licensee.

Section 7. Effective Date. The requirements of this administrative regulation shall not be implemented or enforced prior to the effective date, determined pursuant to KRS 13A.330, or January 1, 2022 ~~[July 1, 2021]~~ [January 1, 2012], whichever is later.

Section 8. Scope. This administrative regulation shall not create or imply a private cause of action for violation of this administrative regulation.

Section 9. Material Incorporated by Reference.

(1) The following material is incorporate by reference:

(a) "Insurance Agents (Producer) Disclosure For Annuities", (7/2020);

(b) "Consumer Refusal To Provide Information", (7/2020); and

(c) Consumer Decisions To Purchase An Annuity NOT Based on A Recommendation", (7/2020).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.



CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary



Andy Beshear
Governor

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Eric C. Friedlander
Secretary

February 2, 2021

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 902 KAR 10:131 – Suggested Amendment

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 10:131, the Department for Public Health proposes the enclosed suggested amendment to 902 KAR 10:131.

If you have any questions regarding this matter, please contact Julie Brooks, Department for Public Health, at 564-3970, extension 4069.

Sincerely,

Donna Little
Deputy Executive Director
Office of Legislative and Regulatory Affairs

Final 1-28-2021

SUGGESTED AMENDMENT

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety**

902 KAR 10:131. Repeal of 902 KAR 10:060 and 902 KAR 10:130.

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 17

After "been added to", insert the following:

902 KAR 10:110 and 902 KAR 10:170

Delete "the administrative regulations".



CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary

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Secretary

February 2, 2021

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 902 KAR 10:140– Suggested Substitute

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 10:140, the Department for Public Health proposes the enclosed suggested substitute to 902 KAR 10:140.

If you have any questions regarding this matter, please contact Julie Brooks, Department for Public Health, at 564-3970, extension 4069.

Sincerely,

Donna Little
Deputy Executive Director
Office of Legislative and Regulatory Affairs

Final 2-2-2021

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety

902 KAR 10:140. On-site sewage disposal system installer certification program standards.

RELATES TO: KRS 211.015, 211.360, 211.375, 211.970[211.350-211.380], 211.990(2)

STATUTORY AUTHORITY: KRS Chapter 13B, 211.350[194.050, 211.090(3), 211.180(3)], 211.357[~~EO 96-862~~]

NECESSITY, FUNCTION AND CONFORMITY: KRS 211.350 ~~requires~~**requires**[~~authorizes~~][~~to 211.380 directs~~] the cabinet to regulate the construction, installation, or alteration of on-site sewage disposal systems except for systems with a surface discharge.[:] KRS 211.357 ~~re-~~**quires**[~~authorizes~~][~~directs~~] the cabinet to establish a program of certification for installers of on-site sewage disposal systems. [~~The purpose of~~] This administrative regulation ~~establishes the~~**is to fulfill the requirement to establish a** certification program including competency testing, training, continuing education, and enforcement procedures relative to maintenance of an acceptable standard of competency for installers. [~~Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.~~]

Section 1. Definitions. [~~As used in this administrative regulation the following terms shall have the meanings set for the below:~~](1) "Approved" ~~is defined by KRS 211.970(1)~~**is defined by KRS 211.970(1)**[~~means that which has been considered acceptable to the cabinet~~].

(2) "Cabinet" ~~is defined by KRS 211.015(1)(a)~~**is defined by KRS 211.015(1)(a)**[~~means the Cabinet for Health Services and includes its authorized agents~~].

(3) "Certification level" means the level of technical skills and knowledge attained by an installer as categorized below:

(a) "Probationary level" means the certification entry level for an installer as specified in KRS 211.357(2) and Section 2(3) of this **administrative** regulation;~~[211.357(2). Installers at this level may possess minimal technical knowledge and require additional training and frequent technical assistance in design and installation procedures; and]~~

(b) "Full level" means the certification level attained by an installer as specified in KRS 211.357(2) and Section 2(4) of this **administrative** regulation;

(c) "Advanced level" means the certification level attained by an installer as specified in Section 2(5) of this **administrative** regulation; and

(d) "Master level" means the certification level attained by an installer as specified in Section 2(6) of this **administrative** regulation[~~Installers at this level are expected to possess competency in design and installation of conventional and modified conventional on-site systems but may require additional training and occasional technical assistance for alternative systems or complex designs~~].

(4) "Certified inspector" means a person employed by the cabinet or by a local health department who has met the requirements for certification contained in KRS 211.360[211.357].

(5) "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357 and the certification maintenance requirements contained in this **administrative** regulation.

(6) "Competency" means an acceptable level of professional conduct, workmanship, and

technical knowledge in the design and installation of on-site sewage disposal systems.

(7) "On-site sewage disposal system", "on-site sewage system", or "on-site system" means a complete system installed on a parcel of land, under the control or ownership of any person, ~~that~~which accepts sewage for treatment and ultimate disposal under the surface of the ground, ~~including~~including. The common terms "on-site sewage system" or "on-site system" also have the same meaning. This definition includes, but is not limited to, the following:

(a) A conventional system consisting of a sewage pretreatment unit or units~~unit(s)~~, distribution devices~~box(es)~~, and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system or wasteload to overcome site limitations;

(c) An alternative system consisting of a sewage pretreatment unit or units~~unit(s)~~, necessary site modifications, wasteload modifications, and a subsurface soil treatment and dispersal~~absorption~~ system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) ~~A cluster system~~systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit(s) and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption system(s) of conventional, modified or alternative design; and

(e) A holding tank ~~that~~which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil treatment and dispersal~~absorption~~ system, or connection to a municipal sewer.

(8) "Person" is defined by KRS 211.970(6)~~means any individual, firm, corporation, association, organization, partnership, business trust, company or governmental unit~~.

Section 2. Application for Certification. (1) ~~A~~No person shall **not** offer services to construct, install, alter, or repair on-site sewage disposal systems without:

(a) Meeting the application **requirement**~~requirements~~ of this administrative regulation~~the cabinet for certification~~; and

(b) Obtaining a valid certification card from the cabinet.

(2) Certification shall be:

(a) Nontransferable from one (1) person to another; and

(b) Valid statewide subject to the provisions of KRS 211.357 and this administrative regulation.

(3)(a) A person~~Persons~~ seeking probationary **level** certification shall:

1. Be of legal age to conduct business in Kentucky;

2. Have sufficient skills and knowledge of **administrative** regulations and construction techniques to pass a minimum competency examination;

3. Submit a completed DFS-303, Application for Certification or Registration, incorporated by reference in 902 KAR 45:065, to the local health department;

4. Provide proof of liability insurance; and

5. Pay the test registration fee of twenty-five (25) dollars by check or money order made payable to the local health department.

(b) A passing score of at least seventy (70) percent **shall**~~must~~ be achieved on the exam.

(c) An individual~~Individuals~~ failing to achieve a passing score may retake the exam by re-registering and submitting another registration fee.

(d) An individual~~Individuals~~ who **passes**~~pass~~ the exam shall submit to the cabinet a forty-five (45) dollar certification fee by check or money order made payable to the Kentucky State Treasurer.

(4) A person~~Persons~~ seeking full **level** certification shall:

(a) Have continuously maintained probationary level status in good standing;
(b) Meet the requirements as specified in KRS 211.357(2);
(c) Submit the documentation required in subsection (3)(a)3 and (4) of this section; and
(d) Maintain requirements for certification as specified in Section 4 of this administrative regulation.

(5) A person[Persons] seeking advanced level certification shall:

(a) Have continuously maintained full level status in good standing;
(b) Submit the documentation required in subsection (3)(a)3 and (4) of this section;
(c) Complete the necessary training workshops with passing scores on workshop tests to obtain advanced level certification as required by the cabinet; and
(d) Maintain requirements for certification as specified in Section 4 of this administrative regulation.

(6) A person[Persons] seeking master level certification shall:

(a) Have continuously maintained advanced level status in good standing;
(b) Submit the documentation required in subsection (3)(a)3 and (4) of this section;
(c) 1. Installed a minimum of two (2) systems as specified in Section 3(4) of this administrative regulation; and

2. Submit written verification of passed inspection from a certified inspector employed by the local health department having jurisdiction; and

(d) Maintain requirements for certification as specified in Section 4 of this administrative regulation[~~Any person proposing to offer services to construct, install, alter or repair on-site sewage disposal systems shall first have met the application requirements of the cabinet for certification and have obtained a valid certificate from the cabinet. Applications shall be made on form DFS-233 Application for Certification to Install On-site Sewage Disposal Systems provided by the cabinet and shall include necessary information about the applicant, and shall be accompanied by an applicable fee as established in KRS 211.357(3).~~

(2) For probationary certification applicant's qualifications shall be as follows:

(a) Applicant shall be a specific individual person of legal age to conduct business in Kentucky;

(b) Applicant shall have sufficient skills and knowledge of regulations and construction techniques to pass a minimum competency examination;

(c) Applicant shall possess or have ready access to use of necessary construction equipment including a backhoe, dump truck, hand tools, transit or level and leveling rod; and

(d) Applicant shall submit proof of liability insurance.

(3) Applicant's qualifications for full certification shall be as follows:

(a) As specified in subsection (2)(a) through (d) of this section; and

(b) As specified in KRS 211.357(2)

(4) Applicants meeting the qualifications listed above shall be issued the appropriate certificate by the cabinet.

(5) Certification shall be valid only for the specific individual person to which it was issued and is not transferable to another person. Certification shall remain in effect and be valid statewide subject to the provisions of this regulation and KRS 211.357].

Section 3. Certification Level Standards. Certification level standards shall be limited to on-site systems that utilize only the following:

(1) Probationary certification level is limited to residential, on-site systems utilizing:

(a) Gravity distribution;

(b) Rock-filled trenches or beds;

(c) Leaching chamber trenches or beds; or

(d) Evaporation-absorption lagoons.

(2) Full certification level is able to install residential, commercial, industrial, or public facility

systems utilizing:

- (a) Dosed systems;
- (b) Fill and wait systems;
- (c) Leaching chambers at grade; or
- (d) Constructed wetlands; and
- (e) Probationary certification level system listings.

(3) Advanced certification level is able to install residential, commercial, industrial, or public facility systems utilizing:

- (a) Low pressure pipe systems;
- (b) Mounds;
- (c) Drip irrigation;
- (d) Advanced treatment;
- (e) Experimental technology; or
- (f) Cluster systems; and
- (g) Probationary and full certification level system listings.

(4) Master certification level is able to install residential, commercial, industrial, or public facility systems utilizing probationary, full, and advanced certification level system listings.

Section 4. Maintenance of Certification. (1) ~~Each person~~**[All persons]** holding a valid certification under KRS 211.357 shall be required to:

(a) Attend training workshops offered by the cabinet to maintain certification and improve competency based on the level of certification attained;

(b) Maintain and submit proof of liability insurance annually to the local health department; and

(c) Annually pay the certification fee as required by Section 2(3)(d) of this administrative regulation to the Kentucky Department for Public Health.

(2) An installer whose certification has expired shall:

(a) Comply with subsection (1) of this section;

(b) Submit proof of completion of continuing education units; and

(c) Receive a renewal certification card prior to installing an on-site sewage system.

(3) For all certification levels, ~~Attendance at~~ a minimum of two (2) training workshops for a total of six (6) approved continuing education units per year with passing scores on workshop tests shall meet certification maintenance requirements.

~~(4)~~**(3)** Attendance at workshops, seminars, or conferences not sponsored by the cabinet may be substituted on a one (1) for one (1) basis to meet certification maintenance requirements at the ~~determination~~**[discretion]** of the cabinet. Requests for consideration of other training for substitution shall be based upon the following:

(a) Submission of a copy of the training agenda, ~~speaker or presenter biographies~~, and course outlines; and

(b) Submission of proof of attendance and results of any testing or other performance measurement with verification by the training sponsor.

~~(5)~~**(4)** Upon receipt of a request for training substitution the cabinet shall compare that training for equivalency with similar training it provides. If equivalency is demonstrated, the cabinet shall accept that training for substitution as specified in subsection ~~(4)~~**(3)** of this section.

~~(6)~~**(5)** Any person failing to meet certification maintenance requirements shall be subject to administration action under Section ~~7~~**(6)** of this ~~administrative~~ regulation and KRS 211.357(4).

Section ~~5~~**(4)**. Training. (1) The cabinet shall develop and implement a series of training workshops for certified installers in the areas of on-site sewage disposal system design, technology, application and function.

(2) Training workshops shall be conducted throughout the state at frequencies, times, and

locations necessary to provide all certified installers a reasonable opportunity to attend a number of workshops sufficient to maintain certification.

(3) A schedule of training workshops, including dates, times, location, and topics~~[, and registration forms]~~ shall be prepared and made available to all certified installers to notify them of training opportunities and allow for scheduling attendance.

(4) A series of training courses shall be developed including instructor and student manuals, and other audiovisual and written materials.

(5) The cabinet may charge a reasonable fee at each training workshop to support program costs.

(6) The cabinet shall establish, through grants or contracts, a training staff composed of local health department fully certified inspectors to conduct training workshops on a regional basis. These local instructors shall serve as supplemental staff to the cabinet and act under the direct supervision of the cabinet.

(7) Training workshops for staff and supplemental staff instructors shall be conducted to assure uniformity of training for certified installers.

(8) The cabinet may contract with other governmental agencies, private consultants, or professional organizations for specialized instructor services.

Section ~~6~~⁵. Materials and Equipment. (1) Each training course shall be developed into a training materials packet consisting of the following:

- (a) Course outline;~~[:]~~
- (b) Instructor script;~~[:]~~
- (c) Trainee guide;~~[:]~~
- (d) Audiovisual materials;~~[:]~~
- (e) Trainee worksheets and reference sheets;~~[:]~~
- (f) Test;~~[:]~~
- (g) Instructor comment sheet; and~~[:]~~
- (h) Trainee comment sheet.

(2) A complete training materials packet, in hardcopy or digital format~~[assembled in a loose-leaf, three (3) ring binder,]~~ shall be provided to each instructor for each course.

(3) A training material packet, excluding subsection (1)(b), (d) and (g) of this section, shall be provided to each trainee for each course.

~~(4) [A loose leaf, three (3) ring binder shall be provided to each trainee at the first workshop attended. This binder shall be used by the trainee to assemble a reference manual for the first course and all subsequent courses attended.]~~

~~(5)]~~ Sufficient stocks of instructor and trainee material packets shall be maintained for each course to meet demand.

~~(5)[(6)]~~ Audiovisual equipment~~[, including an overhead projector, slide projector, projection screen, videocassette player, and television monitor]~~ shall be available to each instructor.

Section ~~7~~⁶. Enforcement. (1) Failure of any certified installer to comply with the requirements of KRS 211.350, 211.357(4) and (5), 902 KAR 10:081, 902 KAR 10:085, or this administrative regulation shall result in administrative action being taken.

(2) A minimum six (6) months probationary period shall be assigned to any certified installer who:

(a) Fails final inspection on any two (2) consecutive systems that~~[which]~~ require follow-up inspections before approval is granted;

(b) Backfills any system before final inspection is conducted and approval to backfill is given;

(c) Fails final inspection on any system that~~[which]~~ results in reconstruction of the system before approval can be given;

(d) Fails to place, cause to be placed, or fails to supervise placement of any required addi-

tional fill soil over an installed system;

(e) Fails to call for final inspection of any system;

(f) Fails to be present on the site anytime work is being performed on the system under construction;

(g) Fails to provide name, certification number, and notification of intent on application of permit when performing excavation and backfilling work on permitted homeowner installations;
or

(h) Performs work on any system outside of the designated certification level.

(3) Probation may be assigned to a certified installer by the cabinet or by the certified inspector having local jurisdiction. Terms of the probationary period shall stipulate any restrictions, requirements, or additional training ~~determined~~**deemed** necessary to correct performance.

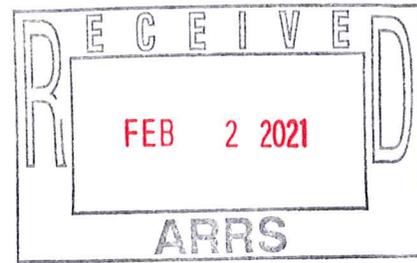
(4) For other violations, the provisions of KRS 211.357(4) and (5) relating to suspension or revocation of certification shall apply. [~~In addition, if necessary to correct damaged or abandoned systems or sites, surrender of business bond shall be required.~~]

(5) In all instances of administrative action being taken for probation, suspension or revocation, a certified installer shall have the right to request an administrative ~~conference~~**hearing**. The request shall be submitted in writing on form DFS-212 - Request for ~~Conference, incorporated by reference in 902 KAR 1:400,~~**Hearing** to the local health department having jurisdiction or to the cabinet. All administrative ~~conferences~~**hearings** shall be conducted ~~pursuant to~~**in accordance with** 902 KAR 1:400.

(6) If immediate legal action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or compel compliance with KRS 211.350(5), (7), (8), and (9) [~~(2) and (3)~~], 211.357(4) and (5) or **administrative** regulations pursuant to those statutes, the cabinet or local health department concerned may maintain, in its own name, injunctive action against any person engaged in the construction, installation, or alteration of an on-site sewage disposal system.

(7) The cabinet shall be notified within two (2) business days~~in writing~~ of any administrative action taken by a local health department against any certified installer, so that other local health departments can be alerted to that installer's status.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.



**CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary**

Andy Beshear
Governor

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Eric C. Friedlander
Secretary

February 2, 2021

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 902 KAR 10:150– Suggested Amendment

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 10:150, the Department for Public Health proposes the enclosed suggested amendment to 902 KAR 10:150.

If you have any questions regarding this matter, please contact Julie Brooks, Department for Public Health, at 564-3970, extension 4069.

Sincerely,

Donna Little
Deputy Executive Director
Office of Legislative and Regulatory Affairs

Final 1-28-2021

SUGGESTED AMENDMENT

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety**

902 KAR 10:150. Domestic septage disposal site approval procedures.

**Page 1
RELATES TO
Line 6**

After "KRS", insert "211.355".

**Page 1
NECESSITY, FUNCTION, AND CONFORMITY
Line 9**

After "KRS 194A.050(1)", insert "requires".
Delete "authorizes".

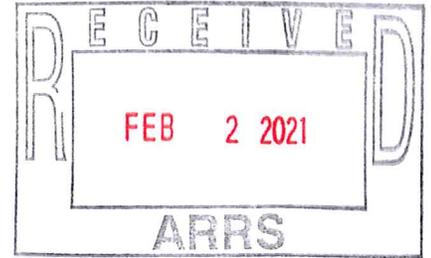
Line 12
After "KRS 211.980", insert "requires".
Delete "authorizes".

**Page 3
Section 2(1)(a)
Line 13**

After "Disposal Site,", delete "(12/18)".

**Page 4
Section 2(3)(b)6.
Line 21**

After "Other information", insert "determined as".
Delete "deemed".



CABINET FOR HEALTH AND FAMILY SERVICES
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February 2, 2021

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 902 KAR 10:160– Suggested Amendment

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 10:160, the Department for Public Health proposes the enclosed suggested amendment to 902 KAR 10:160.

If you have any questions regarding this matter, please contact Julie Brooks, Department for Public Health, at 564-3970, extension 4069.

Sincerely,

Donna Little
Deputy Executive Director
Office of Legislative and Regulatory Affairs

**Suggested Amendment
Department for Public Health
Division of Public Health Protection and Safety**

902 KAR 10:160. Domestic septage disposal site operation.

Page 1

RELATES TO

Line 7

After "211.981", insert ", 211.995".

Page 1

NECESSITY, FUNCTION, & CONFORMITY

Line 14

After "relating to", insert the following:
vehicle tank and equipment requirements;

Line 15

After "business; approval of", insert the following:
disposal or treatment sites and methods;

Line 17

After "procedures" insert the following:
, including suspension or revocation of licensing; injunctive action

Page 3

Section 2(1)(a)

Line 16

After "(a)", insert "A".
Delete "No".
After "person shall", insert "not".

Page 9

Section 6(7)

Line 1

After "Other", insert ", similar".
After "methods", delete the following:
not specified in this administrative regulation

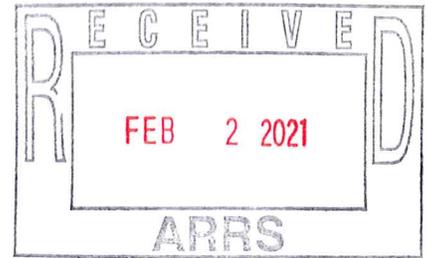
Page 12

Section 8(2)

Line 18

After "denied", insert "if there is".

Delete "in the event of".



CABINET FOR HEALTH AND FAMILY SERVICES
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Eric C. Friedlander
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February 2, 2021

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 902 KAR 10:170– Suggested Amendment

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 10:170, the Department for Public Health proposes the enclosed suggested amendment to 902 KAR 10:170.

If you have any questions regarding this matter, please contact Julie Brooks, Department for Public Health, at 564-3970, extension 4069.

Sincerely,

Donna Little
Deputy Executive Director
Office of Legislative and Regulatory Affairs

Suggested Amendment
Department for Public Health
Division of Public Health Protection and Safety

902 KAR 10:170. Septic tank servicing.

Page 1

RELATES TO

Line 6

After "211.974,", insert "211.978, 211.979,".

Page 1

NECESSITY, FUNCTION, & CONFORMITY

Line 15

After "conduct of business;", insert the following:
approval of disposal or treatment sites and methods;

Page 3

Section 2(1)(b)1.

Line 23

After "\$150", insert semicolon.
Delete the comma.

Page 7

Section 3(16)

Line 9

After "compliance", insert "in accordance".

Page 7

Section 3(17)

Line 13

After "performed", insert comma.

Page 8

Section 5(5)

Line 22

After "number", insert "shall be".
Delete "is".

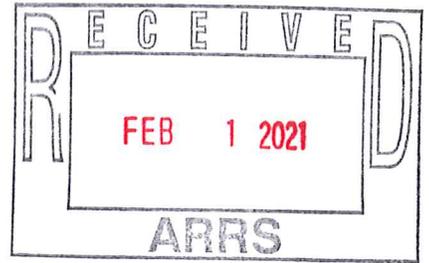
Page 9

Section 6(2)

Line 14

After "denied", insert "if there is".

Delete "in the event of".



CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary

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Eric C. Friedlander
Secretary

February 1, 2021

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 921 KAR 3:035 -- Agency Amendment.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 921 KAR 3:035, the Department for Community Based Services proposes the attached amendment to 921 KAR 3:035. If you have any questions, please feel free to contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

Donna Little
Deputy Executive Director
Office of Legislative and Regulatory Affairs

Agency Amendment

Cabinet for Health and Family Services Department for Community Based Services Division of Family Support

921 KAR 3:035. Certification process.

Page 6

Section 5(4)

Lines 1 through 3

After "number", insert the following:

, delinquency in payment of court-ordered child support through the Department of Income Support, Child Support Enforcement Program in accordance with 921 KAR 3:025, Section 3(11).

(This change re-inserts language previously designated as being deleted.)